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PROBLEMS OF ACCESS BY SMALL BUSINESSES TO TRADE REMEDIES

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

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PROBLEMS OF ACCESS BY SMALL BUSINESSES TO TRADE REMEDIES

FRIDAY, APRIL 6, 1984

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:34 a.m., in room SD-215, Dirksen Senate Office Building, the Honorable John C. Danforth presiding.

Present: Senators Danforth, Heinz, Chafee, Baucus, and Mitchell.

[The press release announcing the hearing and the prepared written statements of Senators Baucus, Chafee, Grassley, and Mitchell follow:]

[Press Release No. 84-115]

SUBCOMMITTEE ON INTERNATIONAL TRADE ANNOUNCES HEARING ON PROBLEMS OF ACCESS BY SMALL BUSINESSES TO TRADE REMEDIES

Senator John C. Danforth (R., MO), Chairman of the Subcommittee on International Trade of the Committee on Finance, announced today that a hearing will be held on Friday, April 6, 1984, regarding problems that small businesses face in seeking relief under U.S. trade laws.

The hearing will begin at 9:30 a.m. in Room SD-215 of the Dirksen Senate Office Building.

Senator Danforth stated that the Subcommittee was particularly interested in determining whether the cost and complexity of trade laws may effectively diminish the relief they might offer small businesses from unfair trade practices or from import surges that seriously damage domestic industries. The Subcommittee also seeks testimony on two bills that seek to address perceived problems in this regard, S. 50 and S. 1672. These bills, among other things, would create a small business assistance office in the Department of Commerce; authorize that office to pay reasonable expenses incurred in connection with proceedings under the trade laws; and make several changes in the standards and procedures of the unfair trade laws designed to expedite their administration.

STATEMENT BY SENATOR MAX BAUCUS

Thank you Mr. Chairman. I am pleased to have an opportunity today to discuss some of the trade problems faced by small businesses. As imports flood the American market at ever increasing levels, we must insure that our small businesses are protected against such unfair trading practices as subsidization and dumping. I commend you for holding a hearing on this important issue.

SMALL BUSINESS: THE BACKBONE OF THE AMERICAN ECONOMY

Mr Chairman, America was built by small businesses. Our great risk takers, inventors, and economic pioneers all began with small businesses.

The future growth of our economy continues to depend daily on the entrepreneurship and innovations only small business can provide. Most new jobs are provided by small businesses, and they continue to be at the forefront of the high-technology revolution sweeping our nation.

The business man or woman who decides to establish a small firm does so knowing full well that odds on that business surviving into a second year are slim. Well over half of all new small businesses fail before they can begin a second year of operations.

But the ones that do survive keep America competitive and justify our belief that our system is the superior way to sustained economic growth and progress.

THE CHALLENGE OF IMPORTS

Our small businesses today face tougher odds than ever before. They now must face competition not only from American firms, but also from firms as far away as Japan or Brazil, Spain or Singapore. We give these countries broad access to our market. This, coupled with the inflated value of our dollar, has resulted in a flood of imports in recent years. As foreign firms try to take advantage of the opportunities our huge lucrative market presents, our small businesses find it hard to remain price competitive. Larger U.S. firms also find they must turn increasingly to foreign manufacturers for components if they are to remain competitive with foreign suppliers of finished products. This often means they buy fewer components from small businesses specializing in the production of parts for finished goods.

Our trade deficit was nearly $70 billion last year and may reach as much as $120 billion in 1984 if current trends continue. Our small businesses face unprecedented competition from imports, and the competition is growing fiercer.

PROTECTING SMALL BUSINESSES FROM UNFAIR TRADING PRACTICES

Our goal should not be to erect protective barriers that reduce competition in the American market. Competition is not only healthy to a growing economy, it is essential. Our firms should be prepared to face their competitors, whether foreign or domestic, without the built-in advantage of import barriers.

By the same token, our small firms should not be placed at a competitive disadvantage because of unfair trading practices of our foreign trading partners. Subsidies, whether hidden or open, are common practice abroad to increase the attractiveness of goods in the international marketplace. Through these subsidies and through "dumping," foreign suppliers are often able to sell their products on the American market at prices not only well below the U.S. market price, but also well below the price these firms would normally charge in their own country.

This is unfair, and our small businesses must not be made to suffer because of these practices.

Of course, relief often is available, at least technically, under U.S. trade laws.

Larger American firms generally have the time, the resources and the degree of product line diversification necessary to survive the often lengthy period required for our government to detemine whether trade relief is warranted and for adequate compensatory steps to be taken. But small businesses usually do not have this luxury. Therefore, we must consider revising our procedures for granting trade relief to provide small businesses greater access to that relief.

S. 1672: The right answer

I am proud to be a cosponsor of the bill before us today. S. 1672, sponsored by Senator Mitchell, is a comprehensive bill designed to link our existing trade relief laws to the needs of small businesses.

This bill changes current law several ways.

First, it creates a small business advocate for international trade within the Department of Commerce.

Second, it eliminates the U.S. Court of International Trade as the first of two reviewing courts in anti-dumping and countervailing duty cases. The bill would assign exclusive responsibility for review to the Court of Appeals for the Federal Circuit.

Third, it permits petitioners in anti-dumping and countervailing duty cases to elect a "fast track" procedure for seeking trade relief.

Fourth, it reduces the standard necessary to establish a "reasonable indication" of injury for purposes of a preliminary determination under the anti-dumping and countervailing investigations.

These changes in procedures and standards will give the operators of small businesses a viable option to protect a business threatened by imports dumped on the U.S. market. They will not create a built-in advantage of their own, nor violate established international trade law.

But we should not look at this bill as being more than a facilitation of the rights of our firms for protection under the law from unfair trading practices. It is not trade policy.

Only by reducing our federal budget deficit can we lower the value of the dollar and eliminate the 30% price advantage imports enjoy in the U.S. market.

Only be convincing our trading partners to retreat from costly export subsidies can we avoid the degree of dumping now taking place.

Only by breaking down barriers abroad can we open new markets for small business exports and widen their horizons.

Mr. Chairman, this indeed is an important bill which should be acted on quickly. But it is only part of a needed comprehensive trade approach our government must adopt in order to increase American competitiveness at home and abroad.

STATEMENT BY SENATOR JOHN H. CHAFEE IN THE SENATE FINANCE COMMITTEE AT HEARINGS ON THE UNFAIR TRADE REMEDIES SIMPLIFICATION ACT, APRIL 6, 1984

The bills we are considering today are intended to simplify and expedite the procedures for import relief under the antidumping and countervailing duty laws, and therefore to help smaller businesses obtain import relief when that is justified.

I have been concerned about the difficulty and expense associated with obtaining import remedies. Frequently, it is the smaller companies that are in greatest need of the relief provided under our antidumping and countervailing duty laws. Unfortunately, these small companies are least able to afford pursuit of these remedies. The legal costs associated with filing and prosecuting an antidumping case, for example, can be as high as $1 million.

That is why Senator Mitchell and I have introduced S. 1672, the "Unfair Trade Remedies Simplification Act." We believe the bill can provide access to import relief that as a practical matter has been unavailable to them.

Foreign competition poses a real challenge to U.S. businesses. When that competition is unfair, affected companies should not bear the additional burden of unnecessary cost and delay in obtaining relief. The efficient procedures this bill establishes should benefit all parties. I look forward to having the suggestions of our witnesses for improving the bill. I particularly wish to welcome my friend, the Senator from Maine, who is, of course, the author of one of the bills we are considering today, and who is deeply committed to this effort.

I should also note that this subject has been identified by our Senate Republican Conference as a high priority for action this session. So, I hope the committee can move speedily to report a bill.

STATEMENT OF SENATOR CHARLES E. GRASSLEY, SMALL BUSINESS ACCESS TO TRADE REMEDIES S. 50 AND S. 1672

Mr. Chairman: America can not allow itself to be the dumping ground for the world trading market. We need to find fast, effective, and legal remedies to thwart off any such notions by our trading partners, not to be protectionist, but to protect our domestic industries that may be unjustifiably injured due to unfair trading practices.

I have been concerned for some time over the length of time a petitioner must expend and the cost associated with filing such a petition to prove injury to his industry. In some cases the petitioner is forced out of business before a determination is even made on his case. Or just as bad the petitioner wins his case only to have the foreign industry penetrate the domestic market so deeply that the penalties he must incurr are off-set by the market share he has gained during the CVD and AD proceedings.

Mr. Chairman, the United States must remain an open and free trading nation. However, we need not continually shoot ourselves in the foot and then reload the gun to pull the trigger once more to make sure we are totally incapacitated. America's industries are capable of competing on the international and domestic market as long as everyone is playing by the same rules. But they cannot compete with unscrupulous foreign industries or their governments.

Mr. Chairman, since we have two bills before us today which I understand have some of the same basic language, yet enough of a difference in totality, I will have no further comment at this point and look forward to the discussion and questioning that will follow.

STATEMENT OF SENATOR GEORGE J. MITCHELL

I want to thank you, Mr. Chairman, for scheduling this hearing. The cost, complexity, and delay in obtaining import relief have frustrated many U.S. industries that have sought such relief. Measures to improve the access of small businesses to the trade relief statutes should be a high priority in any major trade legislation marked up by the Finance Committee.

Strong remedies to counter unfair foreign trade practices are essential to maintain our existing trading system. Congress acknowledged the importance of these remedies in the report on the 1979 Trade Agreements Act, which said, "subsidies and dumping are two of the most pernicious practices which distort international trade to the disadvantage of U.S. commerce."

Failure to provide remedies for these practices will inevitably lead to a weakening of support for our open trade policies. The concern that led Senator Chafee and myself to introduce the Unfair Trade Remedies Simplification Act is that the costs of antidumping and countervailing duty cases have put relief from these practices out of the reach of many small- and medium-sized businesses.

The purpose of the antidumping and countervailing duty laws is not served if small firms in industries that are not well organized and do not have substantial financial resources to draw on are effectively denied import relief. Many Maine industries fit this description. In recent years Maine's potato, fishing and lumber industries have all discovered the difficulties in using the antidumping and countervailing duty statutes.

No one doubts that the costs of these cases have risen dramatically since the passage of the 1979 Act. $100,000 is regarded as a bare minimum to prosecute a case, and total costs are frequently much greater. One commentator noted that in some cases the legal and consulting fees have approached the amount of subsidies to be countervailed.

A report completed by the General Accounting Office in 1983 provides additional evidence of the difficulties businesses face in using these laws. The GAO followed up several inquiries of Commerce regarding unfair trade practice relief. Of those inquiries that did not result in petitions being filed, three of the four reasons cited dealt with the complexity in the laws, the expected costs associated with a case, and the time involved in obtaining relief.

The changes in the 1979 Act, which were designed to reduce the discretion of the federal government in these cases, led to a litigation type of system to deal with subsidies and dumping. The high costs are due less to the direct costs imposed by the Commerce Department and the ITC than to the decisions of private parties to invest legal and accounting resources at various stages of the proceedings. Failure to take advantage of legal opportunities may be the difference between winning and losing a case, so costs are not a major factor in prosecuting a case.

This trend, of course, is not unique to the trade area. Our society has become increasingly legalistic, and we clearly have a comparative advantage in producing lawyers. It reminds me of a joke about a recent U.S.-China trade agreement. Under the agreement, China will sell to the U.S. 500,000 square yards of surplus fabric, and the U.S. will ship to China 500,000 surplus lawyers. The agreement will help each country produce frivolous suits.

I am sure that there is no disagreement over the objective of improving access to the trade remedies; the challenge is in devising solution. I believe there are several principles that we should follow in drafting measures to improve access to the trade remedies. First, the safeguards for U.S. industry won in the 1979 Act should be preserved.

Second, the measures should be consistent with our international agreements.

Third, the balance in current law between domestic and foreign interests should not be changed. That is, import relief cases should not be easier or harder to win, only less costly to bring.

Fourth, the measures should have a minimal budgetary impact.

I believe the provisions of S. 1672 are consistent with these principles. Two approaches are included in the bill. The first attempts to attack the problem directly by changing procedures to reduce costs and simplify proceedings. The second creates a new office, the Small Business International Trade Advocate, to provide assistance to small business seeking trade relief. This type of office was first proposed by Senator Chafee and myself in 1982, and I understand that we may hear favorable testimony from the Commerce Department on this concept today. I am enclosing for the hearing record a fact sheet describing the specific provisions of the bill.

Of course, these are not the only possible measures. While we have identified important reforms, many other approaches are possible, and I look forward to the testimony this morning.

Senator DANFORTH. I think Senator Mitchell has a statement to open this hearing on the problems of access to trade remedies by small business.

STATEMENT OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Thank you, Mr. Chairman. And thank you, first, for holding these hearings. I also want to welcome Senator Cohen here with whom I have been active in drafting legislation in this area.

The cost, complexity, and delay in obtaining import relief have frustrated many U.S. industries that have sought such relief. Measures to improve the access of small business to trade relief statutes should hopefully be a high priority in any major trade legislation to be marked up by this committee.

Strong remedies to counter unfair foreign trade practices are essential to maintain our existing trading system. Congress acknowledged the importance of these remedies in the report on the 1979 Trade Agreements Act which said that "Subsidies and dumping are two of the most pernicious practices which distort international trade to the disadvantage of U.S. commerce." Failure to provide remedies for these practices will inevitably lead to a weakening of support for our open trade policies.

That concern has led Senator Cohen and I and Senator Chafee and I to introduce, in the latter case, the Unfair Trade Remedies Simplification Act. It is that the cost of antidumping and countervailing duty cases have put relief from these practices out of the reach of many small- and even medium-size businesses.

The purpose of the antidumping and countervailing duty laws is not served if small firms and industries that are not well organized, and do not have substantial resources to draw on, are effectively denied import relief. Many Maine industries fit this description. In recent years, Maine's potato, fishing, and lumber industries have all discovered the difficulties in using the antidumping and countervailing duty statutes. No one doubts that the cost of these cases has risen dramatically since the passage of the 1979 act. One hundred thousand dollars is regarded as a bare minimum to prosecute a case, and total costs are frequently much greater. One commentator noted that in some cases the legal and consulting fees have approached the amount of subsidies involved.

A report completed by the General Accounting Office in 1983 provides additional evidence of the difficulties businesses face in using these laws. The GAO followed up several inquiries of Commerce regarding unfair trade practice relief. Of those inquiries that did not result in petitions being filed, three of the four reasons cited dealt with the complexity in the laws, the expected cost associated with the case and the lengthy time involved in obtaining relief.

The changes in the 1979 act which were designed to reduce the discretion of the Federal Government in these cases led to a litigious type system to deal with subsidies and dumping. The high costs are due less to the direct cost imposed by Commerce and the ITC than to the needs of private parties to invest in legal and accounting resources at every stage of the proceedings. This trend, of course, is not unique in the trade area. Our society has become increasingly litigious and we have a comparative advantage over most countries in producing lawyers.

Since you, Mr. Chairman, and I, and Senator Cohen are all lawyers, it may be appropriate to describe the most recent United States-China trade agreement in which China will sell to the United States 500,000 square yards of surplus fabric; the United States will ship to China 500,000 surplus lawyers, and both countries will therefore be able to reduce frivolous suits. [Laughter.]

I am sure that there is no disagreement among us over the objectives of improving access to the trade remedies. The challenge is to devise equitable and meaningful solutions.

I believe there are several principles that we should follow in drafting measures to improve access to the trade remedies. First, the safeguards that the U.S. industry won in the 1979 act must be preserved. Second, the measure should be consistent with our international agreements. Third, the balance in current law between domestic and foreign interest should not be changed; that is, import relief cases should not be easier or harder to win, only less costly to bring. And, fourth, the measure should have a minimal budgetary impact.

I believe that the provisions of S. 1672 are consistent with these principles. Two approaches are included in the bill. The first attempts to attack the problem directly by changing procedures to reduce cost and simplify proceedings. The second creates a new office, the Small Business International Trade Advocate, which would provide assistance to small businesses seeking trade relief. This type of office was proposed by Senator Chafee and myself in 1982, and I hope that we will hear favorably today from the Commerce Department on this concept.

I am enclosing, Mr. Chairman, for the hearing record a fact sheet describing in detail the specific provisions of the bill.

[The fact sheet follows:]

Unfair Trade Remedies Simplification Act of 1983

The purpose of the bill is to improve the access of small and financially strained domestic firms to the antidumping and countervailing duty (AD/CVD) laws. Current law imposes substantial costs, particularly legal fees, on firms using these subsitutes. For many small firms, these costs have become prohibitive, effectively putting relief from unfair trade practices out of the reach of these firms.

FAST TRACK FOR AD/CVD CASES

Under the bill, petitioners could elect a "fast track" procedure in AD/CVD cases. The fast track is designed to give domestic industry quicker and less costly relief. This would be accomplished by eliminating the preliminary determinations at the ITC and Commerce.

The time limit for the Commerce determination would be 15 days later than the current limits on preliminary determinations by Commerce in AD/CVD cases. The additional current law would also be available in fast track cases. The ITC determination would follow the Commerce determination by 30 days. For most cases, the following timetable would apply:

TIMETABLE

[Days from filing]

	CVD	AD
Commerce initiates investigation	20	20
Commerce decision	100	175
ITC decision	130	205

Fast track cases would be decided 75 days sooner than under current law. Expenses would be reduced by eliminating two stages in the process. Since there would be no preliminary determinations, no provisional duties would be imposed.

SMALL BUSINESS ADVOCATE FOR INTERNATIONAL TRADE

The bill would create within the Commerce Department an independent office to advise and, in some cases, to argue at the agency level on behalf of domestic petitioners who, because of their financial condition, are unable to prosecute fully AD/CVD investigations.

Under current law, both the Commerce Department and the ITC assist domestic petitioners by providing information that may be helpful in their cases. These activities would be performed in the Advocate's office. To enhance the assistance that this office could offer, the advocate's office would be authorized to request a limited number of fact-finding investigations by the ITC, similar to those conducted under section 332 of the Tariff Act of 1930.

AD/CVD cases involve substantial litigation in which advocacy as well as information are essential. Under the bill, the Advocate would be available in certain cases to provide both counsel and advocacy at critical points in proceedings. At present, the ITC provides a somewhat analogous service in Section 337 unfair trade practice cases. In addition, the Advocate would be able to exercise the Commerce Department's existing authority to initiate case on behalf of small businesses.

SIMPLIFYING THE ITC PRELIMINARY DETERMINATION OF INJURY

Under current law, the ITC makes a preliminary determination of a "reasonable indication" of injury under AD/VCD investigations, based upon the "best information available to it."

In practice, this stage has become a very costly part of the proceedings because the ITC conducts exhaustive investigations. TheITC solicits information from the domestic industry, usually through extensive questionnaires. Neither the Antidumping Code nor the Subsidies Code requires such an elaborate investigation.

The bill would simplify this step in AD/CVD cases by providing for less exhaustive investigations at the preliminary stage. Under the bill, information included in the petition, supplied by the parties to the case, and available from public sources would be a sufficient basis for the preliminary injury determination.

JUDICIAL REVIEW

Under current law, the U.S. Court of International Trade is the court for review of AD/CVD cases. The bill would assign this responsibility to the Court of Appeals for the Federal Circuit.

AD/CVD cases are currently subject to a two-step appeals process, in which determinations are first appealed to the Court of International Trade and then to the Court of Appeals for the Federal Circuit. The only function of the courts in these cases is to conduct an appellate review of the agency proceedings. Such review is more appropriate for a court of appeals than for a trial court which has original jurisdiction. By eliminating the first step in this process, the bill brings the import relief area into conformity with the usual administrative practice and reduces the costs associated with appellate review by two different courts.

Senator MITCHELL. Of course, these are not the only possible measures. While we have identified important reforms, many other approaches are possible.

I look forward to the testimony this morning, especially from my colleague, Senator Cohen, who also has been very interested and active in this area.

Mr. Chairman, thank you for your courtesy in holding the hearing and your patience during this statement.

Senator Danforth. Thank you.

Senator Heinz.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator Heinz. Mr. Chairman, I just want to make two brief points.

I hope that this is the first of what will be a series of hearings concerned with the need for trade law reform. It has been over 5 years since this committee wrote the Trade Agreements Act of 1979. It has been 5 years since it was passed. It has been 5 years since we began our experience with it. And there have in that time come to light a number of difficulties that have caused representatives of both domestic industries and foreign producers to support changes in the law. In some cases, these are minor changes; in others, major. But the point is it is time for comprehensive oversight, a set of hearings, in my judgment, on the problems with that act.

One of the serious difficulties that I do have in mind is the tremendous amount of time and expense associated with pursuing an antidumping or countervailing duty complaint. And while one can argue that a large firm or a series of several large firms in an industry can afford to pursue those complaints, it is certainly true that a small business firm has to go to just as much expense, time and effort, hire just as many lawyers as a large firm to pursue such a complaint. And today's hearing is going to address that problem directly.

I commend you, Mr. Chairman, on holding this hearing for that purpose. I trust we will look not only at Senator Cohen's and Senator Mitchell's legislation but the relevant portions of my own bill, S. 2139, the so-called Trade Reform Action Coalition [TRAC] bill. And I hope, Mr. Chairman, that we can look at other problems with our trade laws as well. I thank you for this opportunity on behalf of our small business people.

Senator Danforth. Thank you.

Senator Cohen, thank you for being here.

STATEMENT OF HON. WILLIAM S. COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator Cohen. Thank you very much, Mr. Chairman. First, let me thank you for holding these hearings as you promised last year during the course of deliberations on the Senate floor. I want to compliment you, Senator Mitchell, and Senator Heinz for your superb leadership in this field of assessing our Nation's international trade problems.

I might say, in response to Senator Mitchell, that I know that there are people right now in Maine and Missouri who are looking eagerly at his suggestion in terms of solving our problem with

China. They are plotting at this moment to remove the Senator from Missouri, the junior Senator from Maine, Mr. Mitchell, and myself, from office so that we might expedite our departure and be on our way to China to solve this difficult problem.

I will try to not repeat a number of the key suggestions made by Senator Mitchell. He has pointed out that the basic difficulties are the cost of seeking relief under our trade laws, and the complexity of the current provisions which are certainly befuddling to small businesses. I would add that the burdensome evidentiary rules that are required make it almost impossible for small businesses to be successful.

Basically, the claims are being denied, not so much because of their lack of merit, but because of the bureaucratic maze and the high costs that small businesses have to overcome to be successful. As Senator Mitchell mentioned, issues dealing with the potato, fishing, and wood product industries in Maine, not to mention those of other States, are recently coming to light.

In terms of the cost of bringing claims, I would like to make reference to the attorney situation again. You are going to hear later this morning from Dorothy Kelley, who will testify on behalf of the Maine Potato Council. They currently are involved in an antidumping case. I would say that this is a classic instance of an industry that has been overwhelmed by imports of Canadian potatoes. They are seeking relief through the trade remedies that currently exist. The legal costs are in excess of $100,000 to date. I might add that the Potato Council has one of the finest firms in the country handling their case. That firm is attempting to hold down the cost, but because they now have to go through an appellate procedure, it is going to be even more expensive. It might even exceed double that amount by the time they are finally through.

What is interesting is that the total budget for the Maine Potato Council is only $80,000 a year. So, in just this one case they have already exceeded their annual budget, which makes it prohibitive in the first instance to undertake it. They have undertaken it, however, because of the deep trouble that the potato industry is in. I believe utlimately the potato industry is going to be vindicated through the appellate process, but it is going to take a good deal of time to do so.

The expense of the data collection adds the need to document injury and adds to the complexity of the case. Many times this information is not available on a regional basis. Thus, the petitioner either has to go out and collect the information himself or—ironically—turn to the very country that it is seeking relief against for the information. Also collecting data to respond to the Department of Commerce and ITC questionnaires is costly, burdensome, and requires expensive, economic and financial advice.

S. 50 attempts to address some of these concerns by setting up a special office to assist small businesses in any trade relief proceeding. Specifically, it would assist small businesses in the preparation for and participation in any trade relief proceeding, and it would be authorized to intervene on behalf of the petitioner in trade relief cases.

It would help defray some of the costs to small businesses by authorizing the payment of the first $50,000 of the petitioner's reasonable costs and expenses. Any expense in addition to that would be shared equally by the Federal Government and the petitioner. This cost-sharing approach would try to bring trade remedies within the reach of small businesses while insuring that the petitioner still has a very substantial financial stake involved to present frivolous suits—either of the fabric or a nonfabric kind.

This provision is controversial because many people within the administration, indeed within the Congress, are concerned about helping to defray legal expenses. Yet, this is a major hurdle for any small business.

I would suggest that you can have any variation on the proposal in the bill itself. We could reduce the amount to the first $25,000. We could, I suppose, have the petitioner pay the first $50,000, and then have a cost sharing on the balance. We might even confine it to reimbursement for those successful petitioners if that were the judgment of the committee. But I think this issue has to be dealt with in terms of how to deal with the expenses of small businesses in pursuing these trade remedies.

I also have some difficulty with the material injury determination and judicial review process in antidumping and countervailing duty cases. In the preliminary stage of the cases, the current law requires the ITC to determine whether there is a "reasonable indication of injury from imports." I think this standard results in excessive expense because the ITC often requires information from the domestic industry that would sustain a final determination. Thus, they are held to a very high burden of proof at the very beginning of the process. Neither the Antidumping Code nor the Subsidies Code requires such a high standard. S. 50 would lower this preliminary determination standard to require a sufficient indication only in order to reduce the burden on the petitioner at that stage of the proceeding.

Similarly, the current law's definition of material injury for these cases inadequately addresses the special problems of the small business petitioner, such as the unavailability of data. S. 50 would require the ITC to consider the special circumstances of small business petitioners in deciding whether material injury exists.

It would also reduce the cost of pursuing antidumping or countervailing duty relief by eliminating one layer of judicial review. It would send the appeals in these cases directly to the Court of Appeals for the Federal Circuit rather than to the U.S. Court of International Trade.

There is one other area I would like to talk about, and that is that petitioners experience great difficulty and significant obstacles in seeking relief under section 201, so-called escape clause cases.

Our present law does not permit the regional effects of imports to be considered in granting relief in section 201 cases. S. 50 would require the President to give more weight to regional economic considerations when ruling on 201 cases filed by small businesses. The President would be required, for example, to consider the employment levels, alternative job opportunities, and product lines available in the region. I disagree with the President's statement that has been made in the past that "you can walk and vote with your feet." Apparently he means that if you don't like what is happening, and your industries are being put out of business with a floodtide of imports totally unrestrained, you should just pick up and move. I don't think we can tell the people who work in the shoe industries in New England, and especially in Maine, or the fish industry, or the textile industries, to move to Texas, or to California, or to where they might seek other kinds of employment. That is not, in my judgment, the purpose of so-called free trade or fair trade.

Finally, my legislation addresses the special problems faced by horticultural industries seeking relief under the escape clause. Under the present system, petitioners who market or produce perishable products such as fruits, vegetables, or flowers have to wait many months for the section 201 process to run its course. Almost always their production and marketing seasons have passed before the petition has even been resolved. These circumstances make it difficult, if not impossible, for horticultural industries to plan their next marketing season because they cannot assess what the import situation is going to be.

To remedy these problems, S. 50 provides for a section 201 horticultural fast-track system for perishable commodities. Under the bill, a section 201 petitioner which markets or produces perishable agricultural products may file with the Secretary of Agriculture to request emergency action. The Secretary would then have 14 days to determine whether the imports are causing or could cause serious injury to the domestic industry. If he makes the favorable determination, he would then recommend action to the President who, in turn, would have discretion to impose some appropriate relief.

I would point out that this particular provision is not a new concept. Article 19 of the GATT expressly permits governments to provide special safeguards for perishable products.

The Canadian Government, for example, currently enjoys the benefits of such a horticultural fast-track surtax system which continues to be used on U.S. products entering Canada. The onion industry, for example, is now finding what is happening in Canada by the imposition of this fast-track surtax. Ambassador Brock has requested some sort of compensation, and so far nothing has been heard from the Canadian Government; 6 months has transpired and we are already into a new growing season. This is exactly what the Canadians have done. All I am asking for is that this country have a comparable piece of legislation that would protect our producers as well.

Mr. Chairman, I have tried to address the number of concerns which the small businesses have had in trying to pursue their remedies. It is very difficult for them to do this. I will give you one example of such a situation.

In my State of Maine, we have a young businessman who won an Outstanding Small Businessman of the Year Award. He came here to Washington, met with the President, got an award, and got his picture taken. He has a small toy-manufacturing business. He is the only employer in town, in one small rural community in Maine. He was approached by the Taiwanese to sell his business to them and he refused. Shortly after he refused, it turned out that he started seeing his product—a very remarkable facsimilie of his product—appearing in many of the major stores in this country. They were the same color, the same color scheme, same design—an identical replica. He now has an opportunity to pursue a trade remedy. Unfortunately, he is so small that he is unable to bear the expense of filing relief for infringement of patented products that he has now. So there is another classic case where a foreign Government has targeted a small industry, knowing, it seems to me, that that industry will not be able to respond to an infringement of a legal right in this country. That is just one example of somebody who has with his own hands, sweat, toil, and tears built a small little industry, and is the only employer in town. It will be put out of business because of unfair competition and he can do nothing about it.

So the exact route that you decide to pursue, whether it is the Mitchell-Chafee bill, the Heinz-Mitchell-Chafee bill, the Cohen bill is irrelevant. What we have to do is to fashion some relief for these small businesses who are becoming disillusioned, because they see the cost and the complexities that we all know about. And they see, ultimately, an almost illusory remedy which is held out there, sort of a shimmering chimera in the desert which they cannot take advantage of. And if they do take advantage of it, it ultimately proves to be illusory.

So I hope that as a result of your hearings, Mr. Chairman, that you can fashion some statute that will provide relief for these small industries.

[The prepared statement of Senator William S. Cohen follows:]

STATEMENT OF SENATOR WILLIAM S. COHEN

Mr. Chairman, I appreciate the opportunity to testify before this Subcommittee on S. 50, the Small Business and Agricultural Trade Remedies Act. At the outset, I want to thank and congratulate you, Senator Danforth, as well as other members of the Finance Committee, for your superb leadership in addressing many of our nation's international trade problems.

I first introduced S. 50 in early 1982, after chairing oversight hearings on the trade problems affecting industries in our Canadian border states. The testimony at that hearing convinced me that many of our nation's small businesses are precluded from receiving trade relief under our present system. The extensive documentation requirements, lengthy review process, and complexity of the trade laws make it very difficult for a small business or industry to file and obtain relief. Time and time again I have watched industries which are being hurt by imports pursue the frustrating process of trade relief. Many have been denied relief—not because their claims lacked merit—but because of the bureaucratic maze and high costs they must overcome in order to be successful under our present trade laws. In recent years, the potato, fishing, and wood products industries, as well as many others, in my own state of Maine have confronted these problems in seeking trade remedies.

In my view, the foremost problems facing any small business considering a trade remedy are the cost and complexity of the process. The difficult questions of how to file, document and present a petition require the petitioner to retain an experienced trade attorney, whose fees can easily run $150 to $200 per hour. It is not unusual for the costs incurred in a trade remedy case to run as high as $100,000 to $150,000. It is no surprise that small industries are hard-pressed to finance these cases.

The expense of data collection to document injury further adds to the cost and complexity of the process. For example, although our trade laws permit the filing of countervailing duty cases on a regional basis, federal government trade data is often not available by region. The petitioner, therefore, must either collect this information itself or—ironically—obtain information from the exporting country. Collecting data to respond to Department of Commerce and ITC questionnaires is also costly and burdensome, often requiring expensive financial and economic advice.

S. 50 addresses these problems by creating within the Department of Commerce a special office to assist small businesses in any trade relief proceeding. Specifically, the Small Business Trade Assistance Office would assist small businesses in the preparation for and participation in any trade relief proceeding and would be authorized to intervene on behalf of the petitioner in trade relief cases. The office would also help defray the costs of trade relief by reimbursing needy small businesses for a portion of their expenses. Under the bill, the office would pay the first $50,000 of the petitioner's reasonable costs and expenses. Any expense incurred in excess of this amount would be shared equally by the federal government and the petitioner. This cost-sharing approach would bring trade remedies within the reach of small businesses, while ensuring that the petitioner still has a financial stake in the proceedings.

The success of small businesses is especially hampered in antidumping and countervailing duty cases by the material injury determination and judicial review process. In the preliminary determination stage of these cases, current law requires the ITC to determine whether there is a "reasonable indication" of injury from imports. This standard results in excessive expense because the ITC often requires information from a domestic industry that would sustain a final determination. Neither the Anti-dumping Code nor the Subsidies Code requires such a high standard. My bill would lower this preliminary determination standard, requiring a "sufficient" indication only in order to reduce the burden of the petitioner at this stage of the proceeding.

Similarly, the current law's definition of "material injury" for these cases inadequately addresses the special problems of a small business petitioner, such as the unavailability of data. S. 50 would require the ITC to consider the special circumstances of small business petitioners in deciding whether material injury exists. The legislation would also reduce the costs of pursuing antidumping or countervailing duty relief by eliminating a layer of judicial review. It would do this by sending appeals in these cases directly to the Court of Appeals for the Federal Circuit rather than first to the U.S. Court of International Trade.

Mr. Chairman, the difficulties of small businesses are not confined to antidumping or countervailing duty cases alone. These petitioners also experience significant obstacles when seeking relief under section 201, the so-called "escape clause." Our present law, for example, does not permit the regional effects of imports to be considered in granting relief in section 201 cases. S. 50 would require the President to give more weight to regional economic considerations when ruling on section 201 cases filed by small businesses. The President would be required, for example, to consider the employment levels, alternative job opportunities and product lines available in a region. I believe that this provision will significantly improve the chances of success for small businesses in escape clause cases.

Finally, my legislation addresses the special problems faced by horticultural industries seeking relief under the escape clause. Under the present system, petitioners who market or produce perishable products, such as fruits, vegetables, or flowers, have to wait many months for the section 201 process to run its course. Almost always, their production and marketing seasons have passed before their petition has been resolved. These circumstances make it very difficult for horticultural industries to plan their next marketing season, because they cannot assess what the import situation will be. S. 50 provides for a section 201 horticultural fast-track system for perishable commodities. Under the bill, a section 201 petitioner who markets or produces perishable agricultural products may file with the Secretary of Agriculture to request emergency action. The Secretary of Agriculture would then have 14 days to determine whether the imports are causing, or could cause, serious injury to the domestic industry. If the Secretary makes a favorable determination, he would recommend action to the President, who would, in turn, have discretion to impose appropriate relief.

I want to point out that special treatment of perishable commodities is not a new concept. Article 19 of the GATT expressly permits governments to provide special safeguards for perishable products. The Canadian government, for example, currently enjoys the benefits of a horticultural "fast-track surtax" system, which continues to be used on U.S. produce entering Canada. It is only fair that our own trade laws provide similar relief to domestic perishable commodities.

Mr. Chairman, in drafting S. 50, I have attempted to address some of the major obstacles now facing small businesses seeking trade relief. Our trade laws are not working effectively if small industries, which are often most vulnerable to unfair trade practices and damaging imports, are excluded from the trade remedy process. S. 1672, introduced by Senators Mitchell and Chafee, as well as S. 2139, introduced by Senator Heinz, include other important proposals to solve these problems. I look forward to working with this Subcommittee in finding the most appropriate means of improving the accessibility of our trade laws to small businesses.

Senator DANFORTH. Thank you.

Senator Mitchell.

Senator MITCHELL. No questions, Mr. Chairman. I merely do want to commend Senator Cohen for his longstanding interest and activity in this area in behalf of specific industries in Maine, but also on behalf of small business all over the country who suffer from the same problem.

Senator DANFORTH. Senator Heinz.

Senator HEINZ. Mr. Chairman, I would like Senator Cohen to react to a letter that was sent to a colleague of ours in the House, George O'Brien, from one of his constituents. I will read the letter and you can tell me whether you think it is descriptive of the situation many of our small businessmen find themselves in. And I quote:

> I can tell you from bitter experience that it is a difficult job to convince a hard hit United States manufacturer that despite his severe losses and the need to close facilities and lay off loyal employees, he should invest thousands of dollars and a long proceeding before two different government agencies which will require him, first, to investigate and assemble detailed data from foreign countries and from his long time fierce domestic competitors, will subject him to a detailed questionnaire calling for information in a form he does not keep. It will require him to testify from two to four times in Washington, DC. It can be settled without his participation; won't be resolved for a year; can lead to prolonged judicial review; and if he hangs in throughout it all, the government collects and keeps the duties. What is worst, his competitor, who said no thanks to the civic opportunity to share in the cost, gets the same benefits.

Senator COHEN. I would say, Senator Heinz, that is perhaps a classic letter. It reflects the deep resentment that most small business people feel about how our trade laws are working to our disadvantage. This notion that we are somehow committed to fair trade does not seem to be terribly fair when the playing field is tilted at a very high angle against them.

Senator HEINZ. In your experience is there anything that you would think might be overstated or inaccurate in this letter?

Senator COHEN. Not a word.

Senator HEINZ. Thank you. Thank you, Mr. Chairman.

Senator DANFORTH. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. First, I would like to have a statement entered if I might in the record at the first part of this hearing. And, second, I would like to commend Senator Cohen for his long, active interest in this area. He has been the leader in this field of focusing on the plight of small businessmen who do not have the resources to respond to the unfair trade practices that are affecting his or her industry. So thank you very much for what you have done. As you mentioned, Senator Heinz and I have been interested in this also. And I do hope working with you we can come up with a good solution to this problem. But you have certainly been a leader in the field.

Senator COHEN. Thank you very much, Senator.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. I want to commend Senator Cohen and Senator Mitchell for your efforts in this area. My home State is a small-business State. We are an agricultural State primarily, and we are now very heavily involved in trade. Over 50 percent of our agricultural products are exported, including about 60 percent of our wheat; we are the fourth largest feed producer in the country. But we are not only an agricultural State; there are many new businesses starting up in Montana trying to export.

In order to help these potential exporters, we are setting up in Montana an export club where different exporters compare notes; each trying to help the other out and explain how he or she got around some pitfall and so forth. These legislative efforts are a help. It's another way to help small business in their export efforts because it's clear that they don't have the same advantages as big business. So I thank the Senator.

Senator COHEN. Let me just give you if I can, Mr. Chairman, one more example. The current expression that has gained such popularity and has been politicized somewhat is "Where's the Beef?" And I noticed in today's and yesterday's Washington Post that the United States is now becoming concerned by Japan's restrictions upon our export of beef into their markets. Suddenly we are starting to rear up and say we want some action on the part of the Japanese. This has been going on across the board. You, Senator Danforth, are quite familiar with the shoe product. You came down with me, and Senator Heinz, and others and literally begged the Administration back in 1981 to allow some relief on the shoe problem. We were turned away. They said they could grant no relief notwithstanding what the ITC had recommended. As a result we have seen a dramatic loss in jobs in the shoe industry.

Now we say to at least help us to export our shoes. We have a small, little firm—and Senator Mitchell is very familiar with this company—in Lewiston, ME, called Acorn Products. They make these little slippers that our astronauts wear. They had an order for 30,000 pairs from a Japanese firm to sell those slippers to Japan. The Government came in and said, no, you can't do it. We have got a quota system over here.

We complained to Ambassador Brock. He then started to take it up with the Japanese; 6 months later he said we have got some indication of relief here, but the firm ultimately canceled the order saying it was too late. That's the kind of problem we have.

Not only do we have a problem with their kind of subsidies, and undercutting, and dumping but an inequality in the treatment of our products. I say that we have got to take some action to stop that.

Senator DANFORTH. Well, thank you very much. I guess I would plead guilty to being the villain because the 1979 changes were basically mine. I can say that it was not an intentional villainist role because it appeared to us at that time—it appeared to me at that time and also to the Finance Committee, which went along with the changes—that prior to 1979 the procedures for enforcing the antidumping and countervailing-duty laws were so convoluted and drawn out that there was no real remedy. People would have a complaint and they would never get satisfaction; and the dumping countries and the subsidizing countries and would just go on their merry way forever. There was no point in having the law.

So what we attempted to do in 1979 was to telescope the proceedings so that there would be some relief. And as a matter of fact, some interim relief. But we certainly understood when we were doing that that this was a highly technical area. I can say that probably the most tedious thing that I have done in the Senate was to work with procedural remedies in the trade laws in that 1979 Trade Agreements Act.

But we knew at the time that if you are trying to telescope the process, you run into all kinds of other problems, and that this might end up being sort of a lawyer's relief act. That has been of concern to me ever since. That we attempted to solve one, which had to be solved—that is, the lack of remedy because of the extended nature of the proceedings—we also created something which was kind of frantic in its nature.

I think that you have done a real service in calling attention to this, and focusing on it in legislation. Whether the proposals you have made are the best proposals for dealing with it, I don't know. But I think that one thing that is going to come of this is that hopefully the various parts of our Government—the Commerce Department, the International Trade Commission and the U.S. Trade Representative's office, who deal with this together with the Congress—will take another look at trade remedies, and make sure that they are as simple as they can be. There is no reason for such complexity if it costs more to get the remedies than they are worth.

Senator **Cohen**. Mr. Chairman, could I make just one suggestion which is not directly pertaining to this legislation and those others that are now before the committee?

Senator **Danforth**. Sure.

Senator **Cohen**. We have, I believe, the Chairman of the ITC here today who will be testifying later. Without going into the merits of a case that I was very intimately involved with in the field of potatoes recently, I would like to point out a problem. We had a situation dealing with potatoes in which the Commerce Department found that the Canadians were undercutting the market by almost 37 percent, not counting about a 20- to 25-percent monetary-exchange-rate differential. So if you added that on, you are close to roughly 60-percent undercutting of a market price.

ITC found that, indeed, whatever the undercutting of the market price, that that was not a causal factor in the deterioration of the Maine potato industry. I take issue with that, but that's not a matter to be debated here today.

What I would want to say is perhaps this committee ought to consider setting some sort of a threshold, saying if the Commerce Department finds that there has been an undercutting of the market price by *x* percent, it ought to at least create a rebuttable presumption that there has been injury done, and force, at least, the other country to demonstrate why that presumption ought to be rebutted. I think we have to do that in order to put some equity back into the system because what we have in our country right now is an open floodgate of products coming in, and here we are spending months, indeed years, trying to go through the complexities, such as is it wrong; is it right; is it damage; is it injury; is it material; is it insignificant; were there other causal factors? Meanwhile our industries are going out of business.

What the average person on the street knows is something that we apparently don't know in the higher levels of Government. The average person knows that an industry is being hurt. I think we have got to do something. Otherwise, we are going to, by the absence of action, generate such a contempt for the rule of law that there will be no rule of law. You will have people putting their trucks across the borders in Maine and saying no more imports. That you will have people refusing to seek relief through the legal system because it doesn't provide relief. Even when the equity is tangible, even when you can touch it, you still say, well, we didn't find a causal connection there.

I think we have got to do something. I would recommend that this committee consider the possibility of putting threshold evidentiary considerations into place about rebuttable presumptions. Maybe even absolute conclusive presumptions if it reaches a 60-percent level.

But we have got to take some fairly strong action. Otherwise, if we keep spinning these theoretical webs and niceties while thousands of people are getting thrown out of jobs, I think we are wasting not only our time, but we are doing a great disservice to the rule of law.

Senator DANFORTH. With respect to your example of the counterfeited toys, one of the reasons why I hope we pass the reciprocity bill soon is that that does provide for a remedy. That is, the counterfeiting and intellectual property-right violations would be a violation of the trade laws, and would be actionable under section 301 of the Trade Act.

I might just say that on Monday, April 9, in room 106, in the Dirksen Building there is going to be a show and tell, a veritable boutique of things that are counterfeited. It's a very, very serious problem. And right now there are few remedies. I don't know what they will have to show. Not only toys, I guess, but airplane parts, for example. I mean things that really pose danger to people, including chemicals, along with tape cassettes, and the like. So it might be worth dropping by. A little promotional advertising for the display in SD–106 next Monday.

Thank you very much.

Senator BAUCUS. Mr. Chairman.

Senator DANFORTH. Go ahead.

Senator BAUCUS. Maine has potatoes; Montana has lumber. It is the same kind of problem; 30 percent of the American softwood consumption in America is Canadian; 30 percent. This has developed in recent years because of very low stumpage fees in Canada and low Canadian transportation costs. Canada can subsidize directly and indirectly the production of lumber. The large and growing Canadian share of softwood consumption in America hurts very much the American timber industry. There was a case before the ITC very similar to the case of potatoes. The ITC didn't find injury based on technical reasons. I disagree with the ITC conclusion. Again, it's a complicated factor and it's a real problem. Meanwhile, our producers have to suffer the consequences.

Senator COHEN. We have lots of lumber problems, and fish, and other problems as well in the State of Maine, Senator Baucus, so I understand your concern about that.

Senator BAUCUS. We are not asking other countries to do things they shouldn't do. We are just trying to vindicate our rights.

Senator COHEN. Mr. Chairman, as recently as 1981, during the hearings that we had on the potatoes and the fishing industries in the Oversight of Government Management Subcommittee, our own Commerce Department, State Department, they could not define what a subsidy was. They didn't know what a subsidy was. I had to produce a book during the course of the hearings defining what a subsidy was because it was contained in a publication put out by the Canadian Government. Ironically, so I had to use Canadian publications to even inform our own Government as to what the Canadians, by way of example, were providing in the way of subsidies cataloged by their own Government. So it's going to take a remarkable change in attitude.

Senator **Chafee**. Mr. Chairman, I would mention that there is some relief down the road, in distant sight perhaps, on the trademark matter you mentioned. That that is in the report that perhaps you saw that we submitted in the Task Force for the Republican Conference the other day. We referred to legislation in the Judiciary Committee that deals with this particular problem. And it's one of the things that hopefully we will pass this year.

Senator **Cohen**. He might have a remedy. This particular individual may have a remedy. But, again, he is so small. Notwithstanding his excellence in the field, he is so small that he can't take advantage of it.

Senator **Chafee**. I do appreciate that. And I think the thrust of this legislation is to improve and speed up the procedures. And I don't look on this session as a beat-up-on-imports session because obviously if we want to export we have got to have imports as well. And I think we all recognize that. But where there is a legitimate right, I think we want to make that right available for everybody. And that's the gist of what you are attempting here, and I certainly want to commend you.

Thank you, Mr. Chairman.

Senator **Danforth**. Thank you, Senator Cohen.

Senator **Cohen**. Thank you.

Senator **Danforth**. Next we have Alfred Eckes, the Chairman of the International Trade Commission and Alan Holmer, Deputy Assistant Secretary of Commerce for the Import Administration.

STATEMENT OF HON. ALFRED E. ECKES, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION

Senator **Danforth**. Chairman Eckes.

Chairman **Eckes**. Thank you very much, Mr. Chairman, members of the subcommittee. It's a pleasure and honor to testify before this subcommittee on ways to streamline our trade laws and reduce the cost of their administration. With me today on my right is Lynn Featherstone, a Supervisory Ivestigator; and Mr. Ed Easton, on my left, is an Assistant General Counsel. Both of these individuals have had extensive experience with the antidumping and countervailing duty laws. I intend to invite their comments on some of the issues before the committee.

You have our prepared statement, and to conserve time I will not read it, but instead offer several personal comments about ways to improve the administration of our trade laws for the benefit of both small businesses and large businesses.

First, I think we must be cautious to insure that any reforms do not have a perverse effect, increasing rather than reducing the cost to the parties. In my judgment, this could occur if the Commission were obliged to make an initial determination on the basis of data supplied exclusively by the parties to the case. Many cases would be continued which now would be terminated in 45 days, thus, increasing litigation costs and further disrupting international commerce and creating uncertainty.

Second, in my opinion, what has added significantly to the cost and complexity of administering these laws is the elaborate legal appeals process. I think we have perhaps gone a little overboard in that area. And I'm pleased to see that the legislation under consideration today seeks to correct that problem. And in a moment, Ed Easton will have some more specific comments about the legal appeals issue from our standpoint.

Third, in my judgment some of your concerns about assisting small businesses to utilize the law are already being addressed by the administering agencies. We are not indifferent to the problems of small businesses. I think Lynn Featherstone is in a good position to explain what we do to assist some of the small businesses prepare petitions. I would invite him to make some comments at this time.

Mr. FEATHERSTONE. Thank you, Mr. Chairman. As the members of the committee know, the Commission does not self-initiate title VII cases; nor does it serve as an advocate for businesses at any stage in the process. However, it does provide considerable assistance on request to any firm or group of firms planning to file a title VII petition. In addition, it answers similar requests from respondents in such cases.

Our assistance may generally be characterized as technical since we do not attempt to assess the merits of prospective petitioners' cases. Nevertheless, we review with them the statutory guidelines given to the Commission in making its determinations, and usually cite recent decisions that may be useful to the petitioner in assessing on its own the merits of its case.

We strongly encourage all prospective petitioners to contact us before filing a case so that as many issues as possible can be resolved before the clock begins to run. Since the Commission must make its preliminary injury determination in title VII cases within 45 days of the filing of a petition, the investigative process is greatly facilitated if issues involving such things as product descriptions, marketing channels of distribution, and pricing practices, are fully explored before the investigation is instituted.

The principal focus of our work with prospective petitioners is the development of a legally sufficient petition. To assist them in preparing such a petition, the Commission and the Department of Commerce have jointly developed a sample petition in a questionnaire format, a copy of which is attached to our prepared statement for this hearing.

The section of this sample petition that addresses the allegations of material injury by reason of imports was prepared by the Commission and, if completed, will generally result in a petition that is legally sufficient as far as the Commission is concerned.

The Commission also reviews with the prospective petitioners the procedural aspects of our investigations; particularly, the filing requirements and requirements for participation in public conferences and hearings. We provide them with copies of the relevant statutes, the Commission's rules, and sample questionnaires that they will be required to fill out during the course of the investigation. Most prospective petitioners request some degree of assistance, if only petition review. And when a business is small or has few resources or has had no experience with trade laws, this assistance can be extensive.

Among the Commission's investigations that have resulted from petitions developed after such consultations with our staff on the part of the petitioner, have been cases involving spindle belting from several European countries, Montan Wax from East Germany, and musical instrument pads from Italy. Despite tenuous beginnings, all of these cases eventually were instituted by the Commission and Commerce. One has resulted in the imposition of antidumping duties, and one is currently pending.

Prospective petitioners, particularly small companies, are keenly interested in the cost that they will incur in seeing the investigation through to completion. They must be made aware that this could entail a time-consuming, expensive appeals process. To address this issue, I'm pleased to introduce Mr. Ed Easton, the Commission's Assistant General Counsel.

Thank you.

Mr. EASTON. Thank you.

I would just like to make a brief comment on the litigious aspect of these investigations. Neither the Commerce Department nor the International Trade Commission requires that parties be represented by attorneys or any other professionals for that matter. Both agencies are charged to conduct the investigations that are initiated independent of the degree of effort put forward by the parties.

The effort required of parties is essentially with respect to the petitioners. They must come forward with an adequate petition. If they were to fill out the questionnaire that Mr. Featherstone described, that would be considered an adequate petition.

Also, all parties have a responsibility to come forward to assist the investigators at both agencies to provide the sort of information that the agencies need to make the statutory determinations, and the legal standard is that they are required to come forward with the information reasonably available to them.

I think that the real problem is the tradeoff with judicial review. It is possible for a small business to prosecute an antidumping or countervailing duty investigation by merely filing a petition. If the petition is adequate—and the agency will help to ensure that if it could be adequate, it will be so—then really the only cost is if that party should lose on the determination or if it should win and the import interests appeal. The party is very seriously disadvantaged in any judicial review because at that point it would have to get attorneys and they would not have participated in putting together the record.

So I think that from our point of view, we see this as the real problem. I think it's probably helpful to have as much professional assistance as possible to prosecute one of these trade cases, but it's not necessary. It becomes necessary if you want to take advantage of the provisions in the law for judicial review.

Thank you.

Chairman ECKES. We have had businessmen argue cases before us and do so successfully.

Senator DANFORTH. What was that?

Chairman ECKES. I say we have had businessmen without legal assistance argue cases before us successfully.

Senator DANFORTH. I suppose it's possible for Joe Blow to represent himself pro se in a major, say, antitrust case, but I wouldn't recommend it.

Chairman ECKES. I think this is different, Senator.

[The prepared statement of Commissioner Alfred E. Eckes follows:]

STATEMENT OF ALFRED E. ECKES, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION

Good afternoon Mr. Chairman and members of the Subcommittee. It is a pleasure and honor, as always, to testify before this Subcommittee on trade matters. With me today to offer comments on some of the issues are Mr. Lynn Featherstone, a Supervisory Investigator for the Commission, and Mr. Ed Easton, Assistant General Counsel.

The subject of your hearing—proposals to simplify our unfair trade laws—is an important one, and the Commission wants to render all possible assistance. Over the last four years since the Trade Agreement Act of 1979 became law, the Commission has handled a record number of unfair trade practice cases under title VII—some 532 in number. The large volume of cases, which we estimate have involved over $100 billion in domestic shipments and some 25 percent of the manufacturing work force, is a clear indication of the importance U.S. businesses attach to the impact of foreign trading practices in domestic markets.

In my view, it is always possible to improve on existing law as changing circumstances suggest. We have had enough experience administering title VII to draw some meaningful conclusions. While the current process is fair and open, we hear complaints from many businesses that it is too costly and time-consuming. An antidumping case, for example, is estimated to cost a minimum of $100,000, excluding costs associated with possible appeal.

Among the suggested trade law changes before you are proposals that seek to reduce this process time and thus the costs imposed on all parties. Proposed measures would simplify title VII preliminary procedures, create a fast-track option that would eliminate preliminary procedure altogether, and change court review of decisions to a one-step process.

Of particular concern to the Subcommittee is the plight of small businesses that lack the money and the expertise to seek relief from foreign unfair trade practices. Special assistance for small businesses would be provided under both S. 50 and S. 1672.

I certainly support the objectives of these proposals—to save time and money and to improve access to relief under our trade laws for all members of the U.S. business community. However, I do want to caution on one point. Reducing time and cost in one part of the title VII process may actually increase costs to all parties in the long run. When the preliminary phase of an investigation is simplified by basing decisions at that stage on petition-supplied data, cases may be continued that would be rejected in a preliminary under present practice. This would make the total process more costly for the parties and for the government.

As you know, the Commission could reduce the information it gathers at the preliminary stage under current law. It has not moved to do so because of the threat posed by appeal of a negative decision. Basing preliminary decisions on petition-supplied information would tend to reduce if not eliminate negative preliminary decisions. The Subcommittee should be aware of the trade-off here.

I think it would be helpful if we also comment on some of the other proposals. Since Lynn Featherstone as a Supervisory Investigator has worked closely with businesses as they prepare for investigations, I will invite him to describe the assistance the ITC currently provides businesses of all sizes, and what lessons we have learned from this experience.

AID TO PROSPECTIVE PETITIONERS

The Commission does not self-initiate title VII actions nor does it serve as an advocate for business at any stage in the process. However, it does provide considerable assistance, on request, to any business planning to file a title VII petition. Similar assistance, when requested also is provided to respondents in such cases.

Our assistance may be generally characterized as technical, since we do not attempt to assess the merits of prospective petitioner's cases, nor do we make referrals to members of the trade bar who regularly practice before the Commission (we do provide names of counsel who have recently filed petitions if requested to do so). Nevertheless, we carefully review with them the statutory guidelines given to the Commission in making its determinations, and usually cite recent decisions that may be useful to the petitioner in assessing on its own the merits of its case.

At this point I should stress that our assistance to prospective petitioners is not limited to principals of the concerned company, but is also extended to counsel representing such firms. In fact, most of our work in this "pre-investigation" activity has been with legal representatives, some of whom have never before done trade work. We strongly encourage all prospective petitioners to contact us before filing a case so that as many issues as possible can be resolved before the clock begins to run. As you know, in all title VII cases the Commission must make its preliminary injury determination within 45 days of the filing of a petition. This process is greatly facilitated if issues involving such things as product descriptions, marketing channels of distribution, and pricing practices are fully explored before an investigation is instituted.

The principal focus of our work with prospective petitioners is the development of a legally sufficient petition. To assist them in preparing such a petition in questionnaire format, a copy of which is attached to this statement. The section of this sample petition that addresses allegations of material injury by reason of imports was prepared by the Commission and, if completed, will generally result in a petition that is legally sufficient as far as the Commission is concerned.

The Commission also reviews with prospective petitioners the procedural aspects of our investigations, particularly the filing requirements and requirements for participation in public conferences and hearings. We provide them with copies of the relevant statutes, the Commission's "Rules of Practice and Procedure," and sample questionnaires that they will be required to fill out during the course of the investigation. Most prospective petitioners request some degree of assistance, if only petition review. When a business is small and has few resources, or has had no experience with trade law, assistance can be extensive. Although most assistance is given at the Commission, we do travel to company sites at times when circumstances warrant.

Among the Commission's investigations that have resulted from petitions developed after consultations with our staff were cases involving spindle belting from several European countries, montan wax from East Germany, and musical instrument pads from Italy. Despite tenuous beginnings, all of these cases eventually were instituted by the Commission and Commerce, one of them resulted in the imposition of antidumping duties, and one is pending at Commerce.

JUDICIAL REVIEW—DIRECT AND INDIRECT COSTS

The appeals process for ITC determinations is proving to be lengthy: 37 of the fifty-seven cases filed are still pending before the Court of International Trade. Only three cases have had a decision on the merits, one filed in 1980 and the others in 1981 and 1982. Two of these were decided in the latter half of 1983. The third was decided in March of this year. Two of the cases have been appealed to the U.S. Court of Appeals for the Federal Circuit. The most recently decided case may be appealed as well.

The increasing possibility of appeal has had an inevitable effect on the costs of title VII investigations. At the administrative level, neither the Commission nor the Commerce Department requires that parties be represented by attorneys or employ any other type of professional assistance during antidumping or countervailing duty investigations. A party need only respond to official requests for information by the agencies and, in the case of a petitioner, file an adequate petition. The agencies are charged under the Tariff Act to conduct these investigations independent of the degree of effort of an interested party.

However, the degree of effort employed is now often influenced by the judicial review provisions. Losing parties at the administrative level may challenge the result in seeking judicial review. To protect its interests, the winning party at the administrative level will most probably intervene in the litigation. If an intervening party did not fully participate in the administrative investigation, it is at a disadvantage. It has not shaped the development of the record in the administrative proceedings nor has it worked through an analysis of the record during those proceedings. Therefore, to the costs of the appeals process itself must be added the costs of preparing a case at the administrative level which will position the party properly for possible appeal.

A long judicial appeals process results in additional costs that are difficult to measure. As long as an agency determination is in doubt, trade in the products covered by that determination will be affected. Depending on the circumstances, this could result in unnecessary costs to domestic producers, importers, and/or consumers.

It is possible that as the substantive issues of statutory interpretation are resolved at the appeal level, the percentage of Commission determinations appealed may decrease. However, since courts review both substantive and procedural issues and the agencies are not bound to make findings on each and every argument presented by any party appearing before them, we expect a high rate of challenges to continue into the foreseeable future.

With regard to the provision of S. 1672 that would provide for direct appeal to the United States Court of Appeals for the Federal Circuit, we have doubt that the time and expenses now associated with the judicial review process could be lessened. The provisions in the present law for judicial review were legislated in the Trade Agreements Act in response to complaints of domestic industries. In our view, the private parties to these appeals are a better source for information as to any trade-off in benefits from judicial review should savings be sought by specifying a one-step review process.

CONCLUSION

Mr. Chairman, that concludes our remarks. We will be pleased to answer any questions that you or any Member of the Subcommittee may have. The proposals before you reflect your recognition of certain problems in administering our trade laws and your concern that any changes to those laws be carefully crafted. The Commission, which must operate effectively under these laws, appreciates your concern and stands ready to assist you in this effort.

UNITED STATES DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE COMMISSION

ANTIDUMPING QUESTIONNAIRE

This questionnaire has been prepared in the hopes of simplifying the procedures for persons seeking to file a petition for relief under Title VII, Subtitle B, Tariff Act of 1930, as amended 19 U.S.C 1673 ("the Act").

Upon receipt of a completed questionnaire (or its equivalent following the applicable Department of Commerce (DOC) regulations), the International Trade Administration (ITA) will generally be able to consider the initiation of an antidumping proceeding. Such a proceeding is administrative in nature and may result in the imposition of special dumping duties on specific imports.

Imports of foreign merchandise are liable for special dumping duties only after:

1. the Assistant Secretary of Commerce for Trade Administration, or his delegate, makes a determination that there are, or are likely to be, sales below fair value, and

2. the United States International Trade Commission (USITC) makes a determination that an industry in the United States is being materially injured or threatened with material injury, or that establishment of an industry in the United States is being materially retarded, by reason of the less than fair value imports.

Before completing the attached questionnaire, applicants should consult (1) the Act; (2) pertinent DOC regulations (19 C.F.R. Part 353), and (3) USITC regulations (19 C.F.R. Part 207). Applicants may discuss problems they encounter with either the Office of the Assistant Secretary for Trade Administration (202) 377-2867, or the Director of Investigations for ITC (202) 523-0301.

While this questionnaire is intended to elicit the basic information required by DOC and USITC regulations, a petitioner may file a petition, in any form, as long as the petition contains the data required. The petition should allege the elements necessary for the imposition of a duty under 701(a) or 731 of the Act. In addition, the petition should contain, or be accompanied by, information, to the extent that it is reasonably available to you, which supports the allegations. Documentation of the information provided should be included whenever possible. In any case, as much additional, relevant information as possible should be furnished. In addition, applicants completing and submitting an antidumping petition should clearly indicate if information requested by the regulations or this questionnaire is unavailable and the reasons for its unavailability. Most importantly, information for which confidential treatment is requested must be submitted on separate pages and each page should be clearly marked "Confidential Treatment Requested." A summary or approximated presentation of the confidential information should be submitted. If the information cannot be summarized, a statement listing the reasons why it cannot be summarized must be submitted. A summary of figures regarded as confidential should be provided, expressed in a range of not more than 10 percent above or below the actual figures. Each request for confidential treatment, must be accompanied by a statement listing the reason(s) why this information is entitled to confidential treatment.

DOC regulations state that if the imports are from a country that has a "state-controlled-economy" the information requested by Supplement A should be furnished instead of the information requested in Part C of this questionnaire.

Any information submitted in this questionnaire or any support information which is in a foreign language, must be accompanied by an English translation, unless such requirement is waived.

The completed questionnaire [or petition] and a cover letter, with at least 10 copies, should be sent to:

Secretary
Assistant Secretary for Trade Administration
U.S. Department of Commerce
Room 3826
Washington, D.C. 20230

In addition, a non-confidential version of the petition must be delivered to a representative in Washington, D.C. of the affected country(ies) in which merchandise subject to the investigation is manufactured or produced.

Simultaneous the completed questionnaire [or petition] and a cover letter, which includes, if necessary, a request for confidential treatment and a certification under oath that substantially identical information is not available to the public, with at least 14 copies (in the event that confidential treatment has been requested, one extra copy shall be filed in which the confidential business information has been deleted and this copy should be marked "public inspection") should be sent to:

Secretary
U.S. International Trade Commission
701 E Street, NW.
Washington, D.C. 20436

ANTIDUMPING QUESTIONNAIRE

(All paragraph citations in sections A through C refer to section 353.36 of the Department of Commerce Regulations, 19 CFR Part 353)

Product(s):____

____

Country(ies) from which imported:__________________________

____

____

A. General Information

(1) Name, address and telephone number of the petitioner and any person, firm or association represented by the petitioner. (See paragraph (a)(1)).

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A. General Information Con't.

(2) Identify the industry on whose behalf the petition is being filed, including the names of other enterprises included in such industry. (See paragraph (a)(2) and (a)(12)).

(3) Have you filed within the past 12 months or are you now filing or planning to file for other forms of import relief, involving the same class or kind of merchandise in question? If so, what other import relief and what is the status of such efforts? (See paragraph (a)(3)).

B. Description of Imported Goods, Exporters, and Importers

(1) Detailed description of the imported merchandise including technical characteristics and use. Please supply available catalogues, sales literature or other illustrations. (See paragraph (a)(4)).

(2) Tariff classification(s) (TSUS) of the imported merchandise. (See paragraph (a)(4)).

(3) Name of the country or countries from which the merchandise is being, or is likely to be, imported. If the merchandise is produced in a country other than that from which exported, also indicate the name of the country in which it is produced. (See paragraph (a)(5)).

B. Description of Goods, Exporters and Importers Con't.

(4) Names, addresses, telephone and telex numbers of the foreign manufacturer(s), producer(s), and exporter(s) of the merchandise to the extent such information is known. Indicate, if known, the most recently available information about the volume and value of exports to the United States of each such foreign manufacturer, producer, or exporter: (See paragraph (a)(6)).

Name and Address	Volume	Value

(5) The ports or probable ports of importation of the merchandise into the United States.

B. Description of Goods, Exporters, and Importers Con't.

(6) The names and addresses of enterprises believed to be importing the merchandise. (See paragraph (a)(11)).

C. Price Information

(1)(a) Home market price (expressed in dollars) in the country of exportation of such or similar merchandise; or, if such information is not available, (b) the price from the country of exportation to a third country or countries. Indicate the sales on which such prices were quoted or charged and the basis upon which foreign currency quotations were converted to U.S. dollars. (See paragraph (a)(7).

If the merchandise is from a "state-controlled-economy"--see Supplement A.

Product	Vendor (If not listed in B(4) provide address and telephone/telex numbers)	Price	Adjustments*		Price	Date of Exchange Rate
			Type	Amounts		

* Indicates bases for adjustments in (4) on page 7.

C. Price Information Con't.

(2) If price information is not available in (1) above, then the constructed value of such or similar merchandise is to be used. (See paragraph (a)(7)). Indicate sources and dates of information for:

(a) Materials

major:____

components:____

(b) Labor (separate major categories, e.g., factory, supervisory, etc.):

(c) Other costs of fabrication:____________________________

(d) General expenses (not less than 10 percent of the sum of (a), (b) and (c)): ____________________________

(e) Profit (not less than 8 percent of the sum of (a), (b), (c) and (d)):

Note: If foreign source information is not available, provide information concerning domestic costs together with such adjustments as may be appropriate to reflect the probable costs of the foreign producer.

C. Price Information Con't.

(3) Export price(s) to the United States, or the price(s) to the first non-related purchaser(s) in the United States of such merchandise, if the importer is related to the foreign producer. Indicate the dates such prices were quoted or charged and, if applicable, the exchange rate used. (see paragraph (a)(7)).

Product	Vendor (If not listed in B(4) provide address and telephone/telex numbers)	Price	Adjustments*		Price	Date of Exchange Rate
			Type	Amounts		

* Indicate bases for adjustments in C (4) below.

(4) Information relating to differences between home market price(s) or constructed value and the export price(s) or non-related purchaser price which may be accounted for by taxes, discounts, merchandise differences, different quantities of sales, level of commercial trade, incidental costs such as those for packing or freight, duty, or other items. (Sources for this information should be supplied.)

C. Price Information Con't.

(5)(a) Evidence, if any, that sales in the home market are being made at a price which does not reflect the cost of production and the circumstances under which such sales are made. (See paragraph (a)(9).

(b) Indicate how the "cost of production" was calculated for this purpose, including, if the producer manufactures products other than those that are the subject of this petition, appropriate allocations of fixed costs such as depreciation and interest and methods of allocating to the merchandise in question variable costs incurred by the enterprise as a whole, such as energy.

D. Critical Circumstances Information

The following information should be supplied when critical circumstances are alleged. (See paragraph (a)(14) of section 353.36 of the Department of Commerce Regulations (19 CFR 353.36)).

(1) Provide information which you feel indicates that there is a history of dumping.

D. Critical Circumstances Information Con't.

(2) Provide information which you feel indicates that the importer knew or should have known that the exporter was selling at less than fair value.

(3) Provide information that indicates there have been massive imports of the class or kind of merchandise which is subject of the petition in a relatively short period.

(All citations refer to section 207.26
of the USITC Rules (19 CFR 207.26))

E. Injury Information

(1) Report the quantity of imports of the alleged LTFV merchandise from the country supplying the LTFV imports and imports of like or similar merchandise from all countries in the three most recent calendar years and in the most recent partial year period for which data are available. If quantity data are not available, report the value of imports. (See paragraph (a)(1)).

(Specify unit of quantity__________; if reporting on a
value basis, report in dollars and so indicate)

Source	Most recent partial year period (Specify)	Most recent calendar year (Specify)	Second most recent calendar year (Specify)	Third most recent calendar year (Specify)
All countries-----				
Country supplying LTFV imports---- (Specify)				

(2) Report the lowest and highest known prices at which the alleged LTFV imports are sold in the United States in direct competition with articles produced by the petitioner in each of the periods shown. Report the petitioner's lowest and highest prices for the like or most similar domestically produced article when sold to the same class of customer to which the imported article was sold. (See paragraph (a)(2)).

(Specify the unit of quantity to which the prices apply ____________; report prices in dollars and cents per unit)

Item	Most recent partial year period		Most recent calendar year		Second Most recent calendar year	
	(Specify)		(Specify)		(Specify)	
	High	Low	High	Low	High	Low
Price of LTFV imports 1/----------						
Price of petitioner's product 1/--						

1/ Provide a detailed description of the specific article for which you are giving price information and indicate whether the price is f.o.b., point of shipment in the United States, or delivered to the customer's plant.

(3) Report the petitioner's domestic capacity, production, sales and end-of-period inventories of merchandise like or similar to the alleged LTFV imports in the three most recent calendar years and in the most recent partial year for which data are available. (See paragraph (b)(3)(i)).

Item	Most recent partial year period	Most recent calendar year	Second most recent calendar year	Third most recent calendar year
	(Specify)	(Specify)	(Specify)	(Specify)
Capacity 1/2/-----				
Production (by volume) 2/------				
Sales (by volume) 2/				
Sales (by value)3/				
End-of period inventories (by volume) 2/------				

1/ Define basis: (i.e., number of shifts/day, days/year, etc.)

2/ Specify unit of quantity used

3/ F.o.b. plant, net of all discounts and allowances.

(4) For all U.S. producers, report or estimate aggregate domestic capacity, production, sales, and end-of-period inventories of merchandise like or similar to the alleged LTFV imports in the three most recent calendar years and in the most recent partial year for which data are available. (See paragraph (b)(3)(i)).

Item	Most recent partial year period (Specify)	Most recent calendar year (Specify)	Second most recent calendar year (Specify)	Third most recent calendar year (Specify)
Capacity 1/2/-----				
Production (by volume) 2/------				
Sales (by volume) 2/				
Sales(by value 3/				
End-of period inventories (by volume) 2/------				

1/ Define basis: (i.e., number of shifts/day, days/year, etc.)__________

2/ Specify unit of quantity used:____

3/ F.o.b. plant, net of all discounts and allowances.

(5) Report the profitability 1/ of the petitioner and of the U.S. industry on its domestic production of merchandise like or similar to the alleged LTFV imports in the three most recent calendar years and in the most recent partial year for which data are available. (See paragraph (b)(3)(i)).

Item	Most recent partial year period (Specify)	Most recent calendar year (Specify)	Second most recent calendar year (Specify)	Third most recent calendar year (Specify)
Petitioner--------				
Industry----------				

1/ "Net operating profit" is preferred; if other measure is used, specify:

(6) Report the value of fixed assets 1/ used in producing merchandise like or similar to the alleged LTFV imports for the petitioner and the U.S. industry as of January 1 of the three most recent years. (See paragraph (b)(3)(i)).

Date	Petitioner	Industry
On January 1 of--		
Current year---		
Prior year-----		
Two years ago--		

1/ Specify basis (i.e., book value, original cost, or replacement cost)

(7) Report the number of production and related workers employed and hours worked for the petitioner and for the U.S. industry in the production of merchandise like or similar to the alleged LTFV imports in the three most recent calendar years and in the most recent partial year for which data are available. (See paragraph (b)(3)(iii)).

Item	Most recent partial year period	Most recent calendar year	Second most recent calender year	Third most recent calender year
	(Specify)	(Specify)	(Specify)	(Specify)
	Employment (number of production and related workers			
Petitioner--------				
Industry----------				
	Hours worked (1,000 hours)			
Petitioner--------				
Industry----------				

(8) Provide information on any other factors relevant to possible injury or threat of injury to the U.S. industry producing merchandise like or similar to the alleged LTFV imports. (See paragraphs (b)(3)(i),(ii), and (iii)).

SUPPLEMENT A

State-Controlled Economy Countries

This supplement should be completed in lieu of sections C(1) and C(2) of the Questionnaire when the country of exportation or manufacture is considered a state-controlled-economy country within the meaning of the antidumping law. (If you are unable to respond to section A of this supplement, information in section B should be furnished (See paragraph (a)(8) of section 353.36 of the Commerce Regulations (19 CFR 353.36)).

A. Price Information

(1) Non-state-controlled-economy country of comparable economic development selected for determination of fair value:

____

(2) Complete statement of the criteria and bases for selecting the above-named non-state-controlled-economy country of comparable economic development:

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(3) The price or prices (expressed in dollars) at which such or similar merchandise of the non-state-controlled-economy country of comparable economic development is sold either for consumption in the home market of that country or to other countries (including the United States). Indicate the sales prices quoted or charged and the basis upon which foreign currency quotations were converted to U.S. dollars.

Product	Vendor (If not listed in B(4) provide address and telephone/telex numbers)	Price	Adjustments*		Price	Date of Exchange Rate
			Type	Amounts		

* Indicate bases for adjustments in section C(4) of the Questionnaire on page 7.

B. Constructed Value Information

The Constructed value of such or similar merchandise should be determined by utilizing the first provision listed below which provides an adequate basis for determining constructed value:

(i) the constructed value of such or similar merchandise in a non-state-controlled-economy country of comparable economic development;

(ii) If the above section does not provide an adequate basis, the constructed value of such or similar merchandise in another non-state-controlled-economy country, excluding the United States;

(iii) if neither of the preceding sections provides an adquate basis, the constructed value of such or similar merchandise in the United States.

(1) Non-state-controlled-economy country selected for determination of constructed value; ____________________

(2) Complete statement of the criteria and bases for selecting the above-named non-state controlled-economy country:

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(3) The constructed value of such or similar merchandise. Indicate sources, dates of information and approximate costs as reflected in the market economy country selected.

(a) Materials:

major: ____

____

source: ____

____

components: ____

____

(b) Labor (separate major categories, e.g. factory, supervisory, etc.):

____

____

____

(c) Other costs of fabrication: ______________________________

____

____

(d) General Expenses (not less than 10% of the sum of (a), (b), and (c)______

____

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____

(e) Profit (not less than 8% of the sum of (a), (b), (c) and (d)

____

____

Note: If foreign source and cost information is not available, provide information concerning domestic costs and sources together with such adjustments as may be appropriate to reflect the probable costs of the foreign producer in the market economy selected.

STATEMENT OF ALAN HOLMER, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. HOLMER. Thank you, Mr. Chairman. I am accompanied by Judith Bello on my right, who is my deputy for policy. We are pleased to be here to comment on provisions of S. 50 and S. 1672. These bills seek to streamline our unfair trade law procedures to make trade relief more accessible to small businesses. We support those objectives.

As Secretary Baldrige testified before this committee in February in conjunction with the new Department of Trade, we would support the creation of a small business trade assistance office, and believe it would serve a useful and needed purpose.

In other respects, however, we believe that the objectives of the bill can be better served or better achieved by changes in the antidumping and countervailing duty law rather than through the changes that have been proposed in these bills.

Let me give you a brief overview of how we perceive the antidumping and countervailing duty laws as they affect small businesses. First, the 1979 act made many procedural and substantive changes in law to better protect U.S. businesses both large and small. For example, it provided increased opportunities for judicial review, required hearings when requested by an interested party, and permitted the disclosure of proprietary information to counsel under administrative protective orders.

Yet additional rights are useless if the increasingly legalistic proceedings become so expensive that small businesses cannot avail themselves of those rights.

I think we recognize that problem, and do whatever we can to alleviate the burden for small businesses. When small businessmen tell us that they think imports are being dumped or subsidized, we explain what information is necessary to file a petition, where they can look for such information, and how to prepare the petition itself. Indeed, in some cases, including hard smoked herring filets from Canada being imported into Maine and spindle belting from Germany being imported into North Carolina, we sent import administration analysts to the companies in Maine and North Carolina to assist in data gathering. In short, I believe that we bend over backward to assist small businesses in explaining possible trade remedies and assisting in the preparation of dumping and countervailing duty petitions.

Once the petition is filed, we assume the responsibility for initiating and conducting the investigation. If there is dumping or subsidies, we will find them, whether or not the petitioner is represented by counsel or is actively monitoring our actions. Yet, we cannot prosecute cases for small businesses. Doing so would undermine the appearance of any objectivity, if not our objectivity itself.

The supposedly easy ways to make the proceedings less expensive for small businesses, such as shortening deadlines or providing special relief, we believe are impractical and unwise. For example, under shorter deadlines, we probably would make more mistakes and be sued successfully more often. This would increase, not reduce, costs and uncertainty for small businesses.

As I indicated initially, we believe the alternative is to make our dumping and countervailing duty laws simpler, more predictable and, thus, less expensive.

Both of the two bills that are being discussed today would authorize an advocate for U.S. small business, and would have that person intervene as an interested party in administrative proceedings on behalf of U.S. small businesses. As I indicated, the administration supports the establishment of a small business trade assistance office to inform small businesses of remedies and benefits under the unfair trade laws, and the procedures and to assist them in the preparation of dumping and countervailing duty petitions.

We believe that that office should not participate actively in the investigation itself. Such advocacy by another office within Commerce would make import administration's investigations appear to be biased and unfair. We believe this would seriously aggravate tension with our trading partners, and might invite retaliation.

We also oppose reimbursing small businesses for the expenses incurred in prosecuting unfair trade cases. Such a program would be expensive—too expensive, we believe, in this era of budgetary restraint.

I have outlined in my written testimony our concerns about the proposal to expedite procedures. We believe that the proposal erroneously assumes that requiring a preliminary determination really slows down the administrative process. I submit it does not. In fact, the preliminary determination that we have—and for each of our cases we have a preliminary determination followed by a hearing, with prehearing and posthearing briefs—really forces us to explain in writing what we believe the answer is in that case. And after that, having comments from interested parties, we believe we are able to reach a fairer, more accurate and more legally defensible final determination.

Let me also note that I think one of the principal reasons behind the proposal to expedite procedures relates to Commerce's extension of an unusually large number of cases in 1982 on the grounds that they were extraordinarily complicated. This was when, you will recall, we had over 100 steel investigations. They addressed many, many new and novel issues that had not been addressed by the Department before. Because our workload quadrupled, there were more extensions than normally would have been the case.

In recent months I think our record has substantially improved. Since July 1983, while Commerce has been handling probably 70 or 80 cases, how many have we extended on the basis of their being extraordinarily complicated? Not half, not 10, not 2, not any. We are proud of this record. We believe we have solved the problem of too frequently extending extaordinarily complicated cases, and so reduced the perceived need for expedited procedures.

In my written testimony I also talk about our view as it relates to the ITC injury standard, and transferring the judicial review responsibility from the Court of International Trade to the Court of Appeals for the Federal Circuit.

Let me conclude with one final point, if I could. And that is Commerce now has had roughly 4 years of experience in administering the antidumping and countervailing duty law. We believe, based on that experience and based on input that we have had from a variety of different parties, both inside and outside of Government, that the law can be improved to make it simpler, fairer, less costly, and to provide more predictable and certain relief to U.S. industries.

And, Mr. Chairman, we look forward to working with you and the subcommittee on that task.

Thank you.

Senator DANFORTH. Thank you, sir.

[The prepared statement of Mr. Holmer follows:]

TESTIMONY OF ALAN F. HOLMER, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION

Mr. Chairman, I am pleased to appear before you today to comment on the provisions of S. 50, the "Small Business and Agricultural Trade Remedies Act of 1983," and S. 1672, the "Unfair Trade Remedies Simplification Act," which relate to Commerce administration of the antidumping and countervailing duty law. These bills seek to streamline our unfair trade law procedures and to make trade relief more accessible to small businesses. We support those objectives. Secretary Baldrige testified before this Committee in February that, in conjunction with a new department of trade, a small business trade assistance office would serve a useful and needed purpose. In other respects, though, we believe the objectives of these bills can be better achieved by changes in the antidumping and countervailing duty law supported by the Administration, rather than through the changes proposed in S. 1672 and S. 50.

I would first like to give an overview of the antidumping and countervailing duty law as it affects small businesses. The 1979 Trade Agreements Act made many procedural and substantive changes in that law to better protect U.S. businesses, large and small. For example, it provided increased opportunities for judicial review, required hearings where requested by an interested party, and permitted the disclosure of proprietary information to counsel under administrative protective orders. Yet, additional rights are useless if the increasingly legalistic proceedings become so expensive that small businesses cannot avail themselves of those rights.

We recognize this problem, and do whatever we can to alleviate the burden. When small businessmen tell us they think that imports are dumped or subsidized, we explain what information is necessary to file a petition, where they can look for such information, and how to prepare the petition itself. Indeed, in some cases, including hard-smoked herring filets from Canada and spindle belting from Germany, we sent an Import Adminstration case analyst to the company in Maine and North Carolina, respectively, to assist in data gathering. In short, we bend over backwards for small businesses to explain possible trade remedies and to assist in the preparation of antidumping and countervailaing duty petitions. Occasionally this assistance is publicly ackowledged. In the case of iron castings from India, both the petitioner and his Congressman thanked us for helping the company to understand the countervailing duty law, to gather the necessary information, and to file its complaint.

Once a petition is filed, we assume responsibility for initiating and conducting the investigation. If there is dumping or subsidization, we find it, whether or not petitioner is represented by counsel or is actively monitoring our actions. Yet, we cannot "prosecute" cases for small businesses. Doing so would undermine at least the appearance of our objectivity, if not our objectivity itself.

The supposedly easy ways to make the proceedings less expensive for small businesses—such as shortening deadlines or providing special relief—are impractical and unwise. For example, under shorter deadlines we probably would make more mistakes and be successfully sued more often. This would increase, not reduce, costs.

What alternatives are there? I believe the answer is to make our antidumping and countervailing duty law simpler and more predictable, and thus less expensive. To this end, we support several changes in the law, such as simplifying procedures and concentrating judicial review in a single proceeding.

SMALL BUSINESS ADVOCATE

Both bills would establish within Commerce an independent office headed by an advocate for U.S. small business. Both bills authorize him to intervene as an interested party in administrative proceedings on behalf of small businesses, although S. 1672 would permit such intervention only where the company concerned was financially incapable of participating in the process otherwise. Under S. 1672, the advocate could additionally initiate investigations. S. 50 would establish a system of reimbursing expenses incurred by small businesses.

In the context of a new department of trade, the Administration supports the establishment of a small business trade assistance office to inform small business of remedies and benefits available under the unfair trade laws and of procedures for filing petitions under these laws and to assist small businesses in preparing petitions for relief.

Such an office must not participate in antidumping and countervailing duty investigations, however. Such advocacy by another office within Commerce would make Import Administration's investigations appear to be biased and unfair. This would seriously aggravate tension with our trading partners, and might invite retaliation.

The Administration also opposes reimbursing small businesses for the expenses incurred in prosecuting an unfair trade case. Such a program would be expensive—too expensive, in our view, in this era of budgetary restraint. It would also be difficult to administer. Thus, we believe both the public interest and the interests of small businesses would be served better by simplifying the antidumping and countervailing duty law.

I shall now comment briefly on the other aspects of these bills that relate to our administration of the antidumping and countervailing duty law.

EXPEDITED PROCEDURES

Under the expedited procedures proposed in S. 1672, there would be no preliminary determination by the Department of Commerce ("DOC") or the International Trade Commission ("ITC"), and the time limits for final determinations would be much shorter. The DOC final determination would be due 15 days after the normal date for our preliminary determination, and the ITC final determination would be due 30 days later. Under expedited procedures, then, investigations would be completed 75 days sooner than under current law.

This proposal erroneously assumes that requiring preliminary determinations slows the administrative process. It does not. In fact, preliminary determinations focus issues, generate constructive comment from interested parties, and enable us to reach a fairer, more accurate, and more legally defensible final determination. If we were not given adequate time to prepare our final determinations, interested parties—including U.S. importers and foreign manufacturers—would successfully sue us more often in court. Thus, the bill's intended objective would not be achieved.

The administrative process is time-consuming because of the complexity of the determinations to be made, and because of the numerous procedural safeguards that permit full participation by all interested parties. The expedited procedures would not alter our need for detailed information from foreign producers and U.S. importers for the purpose of identifying subsidy programs and measuring and allocating benefits received; or, in dumping cases, for identifying "such or similar merchandise," appropriate sales and markets, price adjustments, and manufacturing costs. The data often are voluminous and analysis is time-consuming. In addition, we must verify all information relied upon in making our final determinations, a process that may take several weeks of each case analyst's time.

We do not believe expedited procedures would significantly reduce costs to the domestic industry. Moreover, any such reduction could occur only by effectively denying them the procedural rights and safeguards Congress has provided. Administrative protective orders and other provisions in the Act designed to make the decisional process more transparent would be substantially impaired if this proposal were enacted, because there would not be enough time for effective domestic industry participation. In addition, the process of information gathering, analysis, and verification could not be shortened meaningfully without producing results less likely to withstand judicial scrutiny.

Finally, we note that eliminating our preliminary determination would postpone by 15 days the protection afforded by suspensions of liquidation. We suspect that small business would not view such a change favorably.

The Administration is far from alone in objecting to reducing the deadlines in antidumping and countervailing duty investigations. When the Trade Subcommittee of the House Ways and Means Committee recently considered this issue, representatives of domestic industry joined the Administration in objecting. (The proposal was subsequently dropped by the Subcommittee). Indeed, as one preeminent representative of domestic industry stated: "[d]omestic industries need the time that present law provides to safeguard their legal entitlement to relief where unfair trade practices are occurring."

CHANGE ITC INJURY STANDARD

Another proposal in both bills is directed at the standard which the ITC employs in its preliminary injury determination. Under sections 703(a) and 733(a) of the Act, the ITC must determine whether there is "reasonable indication" of injury. The current standard is "based upon the best information available to it at the time of the determination." The proposed new standard would be less exacting: "based upon information (available at the time of the determination) which was provided by the parties or generally available to the public."

We defer to the ITC on this proposal, but offer the following comments. The standard is meant to simplify and cut the cost of ITC investigations at the preliminary stage. However, in denying the ITC the ability to seek and rely upon information not publicly available and not supplied by the parties, the proposal may result in more negative preliminary determinations than would otherwise be made. This would result in less effective enforcement of the law. Further, the proposal does not attempt to alter the more exacting standard of the ITC final determinations. Therefore, it would not simplify or cut the cost of the overall investigation. The preliminary determination would become largely irrelevant to the late phase of the proceeding. It would no longer serve to focus issues or generate relevant comment for interested parties. Thus, the result might well be less accurate, less fair, and less legally defensible final ITC determinations.

The proposal in S. 50 for "special rules" for small businesses in ITC injury investigations also is troubling, principally because it would appear to violate our international obligations.

JUDICIAL REVIEW BY THE CAFC

Both bills would transfer authority to review administrative determinations in antidumping and countervailing duty proceedings from Court of International Trade in New York to the Court of Appeals for the Federal Circuit ("CAFC") in Washington, D.C. We oppose this provision. It would result in the inefficient use of the limited resources of the CAFC. In addition, we do not believe the experience we have had with the present judicial structure shows the need for such a change. Since I understand that the Department of Justice will present its views to the Committee, I will not comment further.

I also will not comment on proposals relating to section 201 of the Trade Act of 1974 since we do not administer that law.

Finally, I would also like to note that we continue to believe that the establishment of a new department of international trade and industry would help us attack the trade problems faced by our industries, including the special problems faced by small businesses, in a more forceful and coherent manner. We urge the members of the Committee to support establishing the new department.

I would be happy to answer any questions.

Senator DANFORTH. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Holmer, we appreciate your testimony. And all of us who are involved with this area are grateful for your support for the new office. I'm a little bit concerned about your opposition to their authority to participate and initiate proceedings. Also, you raised a question about apparent bias.

You are aware that, as I understand it, the ITC now has an unfair-imports-investigation division that can self-initiate cases under section 337. Don't you think some similar office segregated from the decisionmaking process could be set up here?

Mr. HOLMER. Let me make a couple of comments and then perhaps defer to Chairman Eckes so that he might be able to comment on the ITC practice as well. First, my understanding is that the 337 investigations and the role of the attorneys in those kinds of cases is different than what you might have in mind with respect to an antidumping or countervailing-duty case. My understanding is that as a part of those cases, often the ITC encourages settlements. And the real role of that advocate within the ITC is to ensure that any settlement ultimately agreed to would be in the public interest.

I think the difficulty we see as it relates to the dumping and countervailing-duty laws is that those laws are so clearly based on and limited by the GATT and the Subsidies and Antidumping Codes, that the advocate would be perceived by our trading partners as unfair. And they would not appreciate, I don't think, the niceties that you are talking about with respect to having an insulated person perhaps outside of import administration but still within Commerce. Establishing an advocate would depart from the international consensus in this area and undermine at least the appearance of fair, impartial, and objective proceedings.

Senator MITCHELL. But you see, Mr. Holmer, the problem is that for many—I can't quantify it, but would suspect most American businessmen—your concerns with the sensibilities of our trading partners and the lack of concern for the interest of American businessmen is precisely what the problem is. It's worrying about what someone in Japan or France is going to think if we do something to help American businessmen. That's the whole crux of the problem. Now you can't question the fact that that is a perception in this country. You may disagree that it is a reality. And it seems to me that we have to deal with that. If there is a distinction, if it's done fairly, then we ought to be capable of explaining it to our trading partners and still act in the way that provides assistance to American business.

Mr. HOLMER. Let me just make one comment. The Chairman spoke earlier when Senator Cohen was here regarding the role of the advocate. And we believe that the law that was passed in 1979 did make the law substantially more specific and directed Commerce with great particularity as to how it should proceed with respect to these dumping and countervailing-duty investigations.

I cannot emphasize too strongly how seriously we take that responsibility in terms of those being fair and impartial proceedings. And I believe that whether or not there is an advocate, if there are subsidies or if there is dumping, we are going to find them. And that's the commitment we have to making sure that the law that you passed in 1979 works effectively.

Senator MITCHELL. I have some further questions for Mr. Holmer and for Mr. Eckes, but will defer.

Mr. HOLMER. Al, did you have a comment on the 337 question?

Chairman ECKES. Not at this point.

Senator DANFORTH. Senator Heinz.

Senator HEINZ. Thank you, Mr. Chairman.

Mr. Eckes, the Cohen and Mitchell bills would change the standard for the preliminary determination of injury from reasonable to sufficient. They claim, the authors of that legislation, that the ITC now requires them to submit such a high standard of proof to the ITC that it is a standard, in terms of supporting evidence, that is actually sufficient to support a final as opposed to a preliminary determination. What do you say to their change? What do you say to their argument?

Chairman ECKES. Well, Senator Heinz, if Congress wishes to change it, of course, we will administer it, but let me offer a personal perspective on it. It seems to me that if one changes it from a reasonable indication to sufficiency, you are probably going to end up with a situation where at the preliminary phase, all of the cases come up affirmative and are continued, although on the final, unless the law is changed, some of those cases are going to fail. It's going to mean, in short, that the uncertainty involving transactions in the marketplace will continue for an extended period of time.

At present, we terminate about a third of the cases, about 30 percent of the cases, with the preliminary phase, removing the cloud of uncertainty over the marketplace. If you were to continue that 30 percent, many of them presumably would be bad cases that would be terminated on the finals after extensive litigation costs to the parties of continuing the process and arguing before the Department of Commerce and us.

Senator HEINZ. Let's just see if I heard your statistics correctly. You say you terminate about a third of the cases because you do not find reasonable evidence of injury. Is that right?

Chairman ECKES. That's right.

Senator HEINZ. Now among those cases where you do find reasonable indication of injury, how many or how few would you make a final affirmative determination of injury?

Chairman ECKES. Let me give you some figures for the period of January 1980 to January 1984. Over that period of time with respect to antidumping cases, we had 146 that were decided by the Commission. For the antidumping cases in the preliminary phase, 72 percent of determinations were affirmative, and 28 percent negative. With the 134 countervailing-duty cases—and you know the statute is basically the same here—there were 60-percent affirmative and 40-percent negative in the preliminary. So roughly a third of the cases were terminated.

Senator HEINZ. I understand that. I'm curious about the next step.

Chairman ECKES. The next step, I'm sorry. Moving to the final, we have had a fewer number of cases come back because Commerce terminates some of them. Of the final investigations in the antidumping phase, 33 have gone through the Commission. Of those, 70 percent ended in affirmative, 30 percent in negatives. With respect to countervailing duty cases, it was 81 percent affirmative and 19 percent negative. I would basically say, to summarize, that we throw out about a third of them in the preliminary and roughly 25 percent in the final of those that come back to us.

Senator HEINZ. Mr. Holmer, you have said in your testimony that you agree with the objectives of S. 50, S. 1672, presumably many of the objectives in my bill, S. 2139, and then in the rest of your testimony you go on to oppose virtually everything in any of those bills. What are you for?

Mr. HOLMER. A fair question, Senator. There are various proposals that I would like to make sure that we get to each of the members of this subcommittee today. In fact, we ought to be able to do it right now, I think. Let me review them briefly.

One, we support eliminating interlocutory judicial review and concentrate judicial review in one proceeding at the end of each case. We support standardizing, simplifying, and reducing the time and cost of obtaining information under administrative protective order. We support simplifying the adjustments to U.S. prices and home market prices in dumping proceedings. We support greater use of sampling and averaging in dumping cases. We support proposals that would provide that annual reviews be conducted only if requested by the petitioner or the respondent in a given case. That would eliminate the time and expense both for us administratively and also for the parties on each side when they are satisfied with the present levels of the margins.

We would support having only one ITC hearing if dumping and countervailing-duty cases on the same product from the same country are initiated simultaneously. This happens with a fair degree of frequency. We also support permitting industry-labor coalitions to have standing to bring suit.

There is also a list of approximately 45 technical amendments to the law that we have put together that we support. And my understanding is that a packet that we have provided to Chairman Rostenkowski as a part of his markup of the trade-law-reform bill on the House side, has been provided to the members of the subcommittee. At the back of that is the list of the 45 technical amendments. And it provides in detail what the administration's position is on each of the provisions in that bill.

But there is a fair number of items that we think would substantially improve and simplify the process, not just for small businesses but for all U.S. industries.

Senator HEINZ. Mr. Chairman, my time has expired. I will have a followup question for you later.

Thank you.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Gentlemen, I'm a little disturbed by what I perceive to be inadequate representation of small business generally. We in the Congress, we in the Senate and the House, have a duty not only to work out competing interests and pass legislation that's in the best interest of the country; we also have another duty. And that is to represent the little guy, the person who is not as well heeled, the person who is not able to hire a lobbyist to come to Washington, DC, and talk to us as frequently as needed. The little guy can't do it.

You have a parallel duty as public servants to stand taller, speak more loudly for small business, the little guy, because big business has the means to make its message heard. Small business doesn't always have this luxury. They don't have the access. They don't have the means. They don't have the financial ability to do so.

And it's not only the little guy, but it's the American small business man or woman that you have a duty to stand up for. You talk directly to representatives from other countries or indirectly through big business. But big business has competing points of view; on the one hand they want to defend their American markets, and on the other hand they have subsidiaries overseas that sometimes compete with American interests. That's why when big business talks to you, you may get a different signal than when small business talks to you, to the degree that it does.

So I suggest that you be more of an advocate for small business, for American small business, because American small business can't compete with Japan or with Germany. They are trying to make a product, trying to sell a product. But they can't always compete as effectively as American big business, for the reasons I indicated above.

Now I, frankly, think these bills don't go far enough. I think the deadline should be shorter. I think there should be more reimbursement. And I say that because I think small business is so disadvantaged today compared with big business and businesses in other countries. Small business needs more efforts on your behalf and our behalf to stand up for them.

So I suggest that when you go back to your offices this morning, you think about ways to work more for small business in America so they can continue to thrive and grow. As we all know, most innovation is by small business. And our country is going to go down the drain if small business is not protected. So I strongly encourage you to work harder for small business than I sense that you are from the tone of your remarks this morning.

Chairman ECKES. Senator, may I respond for a moment?

Senator BAUCUS. Sure.

Chairman ECKES. We are a judicial agency when it comes to handling cases in this area. We don't talk to lobbyists about the cases. The Commissioners do not talk to the lobbyists. It's all done in public session with an open record, and it is transparent.

Senator BAUCUS. I think that's probably true. But you live too. You are a person. You have friends. People talk to you and they talk to other members of the Commission. Not about the pending cases, but about things in general, and that is just what happens in life; particularly, in Washington, DC. I know you are a different situation. I can see it's a little different than, say, the Department of Commerce. You are more judicial in nature than is the Department. But still the fact of the matter is that we have a public duty, all of us, to stand up for the little guy perhaps a little more than we are.

Senator DANFORTH. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Eckes, I listened to your testimony about small businessmen can appear pro se before you. And I wasn't really overcome by that testimony. Sure, it's possible. But, I think to find a small businessman who is able to commit the time and the resources, particularly the detailed knowledge that it requires to deal with these matters, would be the exception to the rule. I don't know what experience you have, how many you have seen of these small businessmen try to come in and wrestle with these complicated laws, but I would say it's very, very few. And, second, you set forth a series of recommendations.

Two questions. One, how much do you think these recommendations that you made are going to help the small businessman? That's the purpose for which we are having the hearings today. They are going to help expedite actions under the bill and make it simpler. How much do you think they will help the people that we are concerned about this morning?

Chairman ECKES. I think that they and other proposals that I suspect that we will come up with during the course of a rewrite of the antidumping and countervailing duty laws can be of very significant assistance to small businesses and large businesses in simplifying the procedures and making them less costly.

Senator CHAFEE. Well, I certainly hope so.

The second question I have is really addressed to our chairman. Mr. Chairman, there are some suggestions here—when are you going to have these ready, Mr. Holmer?

Mr. HOLMER. We certainly have them ready in terms of concept. In many instances we also have draft statutory language that we could provide to you and to the staff.

Senator CHAFEE. Well, we are all full of concepts, but getting the concept into language is another big step, as you well know. My question of the chairman was going to be to suggest to him that we have a mark-up to consider and to move ahead, if the committee should agree, with the legislation you submit. But time is flying by. Some suggest that we are only going to be here about 70 more legislative days.

What can you do to help us?

Mr. HOLMER. I and other people from the Department of Commerce are available at any time to meet with anyone you would like to attempt to work out a comprehensive package.

Senator CHAFEE. Well, Mr. Chairman, anything we might do in this field would be appreciated. I support the legislation we have. But if there are legitimate reasons, as those who are assigned to administer this legislation believe, that they have got better proposals, that's three cheers. I'm for it. But at least I would like to see something get done. And as you characterized it, Mr. Chairman, this is a tedious effort. Another word would be extremely boring. [Laughter.]

Senator DANFORTH. I think it is both extremely boring and also problematical. I think that we knew this in 1979. That we were involved in some that was very technical. Went right to the heart of what people who have been practicing in this area for a long time have been dealing with on a day-to-day basis. And that it was possible that what we thought were great improvements would turn out to be something less than they have. But I think that you have made a good suggestion. What I would like to do when we finish the questions is maybe nail down some process that will lead up, hopefully, to some legislation.

Senator CHAFEE. Some kind of a hearing process, do you mean?

Senator DANFORTH. Or maybe more informal than that.

Senator CHAFEE. Fine. Well, I, obviously, would support anything like that because I have no pride of—I can't call myself an author. I have no pride of cosponsorship here. [Laughter.]

Senator DANFORTH. Do you have further questions?

Senator MITCHELL. Yes; I do, Mr. Chairman. Thank you.

First, I would like to make just a comment to Mr. Holmer regarding his testimony. You spend a lot of time opposing the expedited procedures set forth in the bill that I have introduced and which Senator Chafee and, I think, at least five other members of this committee are cosponsoring. And included in your written statement you cite what you call a "preeminent representative of the domestic industry" quoting him as saying that "domestic industries need the time that present law provides to safeguard their legal entitlement to relief." It seems to me that statement demonstrates a profound misunderstanding of what my legislation would do because the proposal is to make the fast track optional. Now if the petitioner has the option of proceeding on the fast track or going under current law, I don't know who this preeminent representative is, but it's obvious he or she hasn't even read the bill about which he or she is commenting. How could anybody's rights be prejudiced if the petitioner has the option of staying with the present law or going on the fast track? And I would hope that you would reconsider that aspect of it. I understand that is not the entire basis for your opposition. But since you mentioned it in your statement, I think it ought to be clear that this is an optional proceeding.

Mr. HOLMER. May I speak to that?

Senator MITCHELL. Well, I have only got a little bit of time. If we had enough time, all right, but I wanted to ask Mr. Eckes a couple of questions. This thing seems to speed up when I'm speaking. [Laughter.]

Mr. Chairman, first I have a series of questions regarding proceedings involving agricultural products. And you and I and Senator Cohen and everybody from Maine are familiar with the extensive concern we have had in that area. Because of their length and the limited time we have, I'm going to submit them to you in writing and ask that you respond in writing as promptly and as completely as possible.

[The written questions from Senator Mitchell and Chairman Eckes' answers thereto follow:]

ANSWERS OF CHAIRMAN ECKES TO QUESTIONS FROM SENATOR MITCHELL

(1) I am concerned that the information required by the ITC is much more difficult for industries comprised of many small entities to provide than for industries with a few large firms. Does the ITC take into consideration the record-keeping practices of firms in deciding cases? If not, does this make it more difficult for small businesses to prove injury?

The International Trade Commission takes into consideration the record-keeping practices of firms when the ITC develops its questionnaires and mailing lists for specific investigations. Where there are a large number of small businesses constituting an industry, the Commission endeavors, to the extent possible, to simplify its questionnaire and employ sampling techniques in selecting the firms that receive questionnaires so that the reporting burden will be held to a minimum. This procedure does not make it more difficult for small businesses to prove injury. However, where domestic producers are unable to provide separate data on the production process or profits on the like product which is the subject of the investigation, the Commission is required by the statute (sec. 711(4)(D)) to assess the impact of the subsidized or dumped imports on the narrowest group or range of products, which includes a like product, for which the necessary information can be provided. This provision could make it more difficult for firms who do not have detailed financial records to obtain relief.

(2) The firms that file a petition may be asked to supply information several times during an investigation. For example, a firm may submit information to be included in the industry's petition. Then it may be asked to fill out detailed ITC questionnaires for both the preliminary and the final injury determinations. Many small firms with limited managerial resources may find it difficult to devote their time and effort to providing this information. How much importance does the Commission place on the response it receives on its questionnaires? Does it have the same expectations of small industry, such as potato growers, as it does of a large one, such as steel?

The Commission considers questionnaire responses to be a major input in its investigative process. Although data are developed from multiple sources, questionnaire responses are probably the most important single source of data. The Commission, however, develops only limited data directly from farmers or growers of agricultural products such as potatoes. Instead, it relies heavily upon the extensive information on agricultural products that is collected by the U.S. Department of Agriculture. Where it is necessary to use questionnaires to obtain data from farmers, the questionnaires are brief and are constructed to request only information we feel would be readily available. For instance, any financial data requested would normally be data that could be obtained from the farmer's federal income tax return. The Commission does not send questionnaires to farmers or growers in connection with preliminary investigations.

(3) The Trade Reform Action Coalition has a proposal similar to ours regarding the preliminary determination. The TRAC proposal would continue to allow the questionnaire to be sent during the preliminary investigation, but it would discontinue the public conference in most cases. Do you think that this is a workable proposal? Would it lower the costs to the petitioners in antidumping and countervailing duty cases?

We believe that the elimination of the public conference in a preliminary investigation is a workable proposal but we would also point out that the conference serves a meaningful function. It enables the parties to bring the principal issues involved in an investigation into focus during the preliminary stage. This is helpful to the Commission in making its determination and it is also helpful to the staff in identifying issues that need to be explored in greater depth in the event the Commission conducts a final investigation. Elimination of the conference would probably result in only a modest reduction in the overall cost to the parties of a Title VII investigation.

(4) Do you think that the expanded opportunities for judicial review have contributed to the increased costs of import relief cases? What suggestions do you have to lower these costs without significantly weakening the safeguards that petitioners now have?

In my view the costs of import relief cases are directly affected by the opportunities for judicial review. Attorneys are trained to pursue every possible legal option to protect their clients. Although parties to import relief cases need not be represented by attorneys during agency proceedings, parties that choose not to participate with counsel at the administrative level, will be disadvantaged if the agency decision is to be challenged.

The costs of proceedings and the opportunities for judicial review involve trade offs. Leaving import relief investigations to the discretion of the agencies minimizes the costs of seeking import relief. On the other hand, opening up areas of administrative decision-making to judicial review raises costs.

(5) I understand that the Unfair Imports Investigation Division of the ITC can self-initiate section 337 cases. In your opinion, has this been a useful function? Has self-initiation compromised the objectivity of the ITC's decision making in these cases?

The Commission has the authority to self-initiate section 337 cases. It also has the authority under section 603 of the Trade Act of 1974 to conduct preliminary investigations. Such a preliminary investigation could develop information that would enable the Commission to make an informal judgment as to whether it should institute a section 337 investigation. The Commission has used its authority to self-initiate investigations under sections 603 and 337 in a very limited manner. Since passage of the Trade Act of 1974, we have conducted only 8 investigations under section 603 and only 2 self-initiated 337 investigations. We believe this self-initiation authority is useful but that it should be used only where the public interest is involved. We do not believe that self-initiation has compromised the objectivity of the ITC's decisions.

ANSWERS TO QUESTIONS INVOLVING AGRICULTURAL PRODUCTS

(6) The Senate Report that accompanied the Trade Agreements Act of 1979 stated that because of the special nature of agriculture, including the cyclical nature of production, that special problems exist in determining whether an agricultural industry is materially injured. Can you tell this committee how the Commission has addressed these special problems in its investigations?

The Commission endeavors to determine whether there is any cyclical pattern to U.S. production or demand for articles which are the subject of its investigations. This is true with respect to both industrial and agricultural products. The cyclical nature of an industry can best be ascertained by studying its performance over an extended period of time. Although we only collect data for a three year period in our Title VII investigations, we frequently examine production and consumption data for much greater periods of time by using secondary sources of data, i.e., the U.S. Department of Agriculture for data on agricultural products.

(7) One of the peculiar characteristics of agriculture is that production may vary substantially from year to year as yields change. It appears that the Commission, in recent decisions has not been sensitive to this fact and has attributed the cause of any injury to "over-production" in the United States, not imports. Can you say why imports have not been considered as a contributing factor to any price reductions resulting from an excess of supply, when imports may have been a factor in creating an over-supply situation?

The Commission recognizes that production of an agricultural product may vary substantially from year to year based on yield per acre, weather (i.e., drought and freezes) anticipated price levels at the time of planting, surplus stocks, etc. Trends in production, however, are only one of many indices of injury examined by the Commission in the course of its investigations. It should be noted that the reason the Commission has made negative determinations in some of its recent investigations involving agricultural products was not due to the absence of injury but because it was unable to attribute the injury to imports. In these cases imports were not increasing as a share of the U.S. market, there was no evidence that the imports were underselling the domestic products, and there was little or no evidence of lost sales to imports.

(8) When a producer of an industrial product cannot sell all the merchandise it is capable of producing and capacity remains idle, the Commission considers low levels of capacity utilization as indicative of injury. Why does the Commission not treat a farmer's inability to market his crop at a decent price as also an indication of injury?

The reason the Commission frequently speaks to capacity utilization data with respect to industrial products is because oftentimes a manufacturer of industrial products can make no alternative use of facilities that may be dedicated to the production of an article which is the subject of a Commission investigation. This may also be true in the case of certain agricultural products. However, there are other instances where farmers have alternative uses for their land and are consequently not locked into producing a single crop. It is also difficult to ascertain what the maximum production potential of any given farmland might be under varying circumstances whereas there are oftentimes widely accepted systems of rating the production capacity of industrial plants. The Commission does consider a farmer's inability to market his crop at a "decent" price as an indication of injury.

(8a) The Commission's decisions in both agriculture and industrial product investigations place overriding emphasis on the existence of price underselling as a basis for finding a causal connection between imports and injury to the domestic industry. Yet the statute directs that price depression and the prevention of price increases also be considered. Why have the latter factors been ignored by the Commission?

The Commission does consider price depression and the prevention of price increases as a causal connection between imports and injury to a domestic industry, particularly where imports undersell domestically produced products. It is possible that even though the Commission considered these factors in its investigations, it did not always comment on these factors when it prepared its statement of reasons in support of its determination.

(9) In a number of proceedings involving agricultural products, the Commission has considered the alleged absence of information regarding lost sales to foreign sources as an indication that imports may not be the cause of injury. Do you believe that particular lost sales can be as readily identified in agricultural trade as in industrial product cases where formal offers and acceptances are the normal ways of doing business?

It is more difficult to identify lost sales in agricultural trade than in cases involving industrial products. Nevertheless, the Commission makes an effort to develop such information with respect to agricultural products through inquiries to wholesalers and distributors of these products and in some instances we query large retail chains and institutional buyers. Data obtained from these sources as well as pricing data provided by domestic producers and importers are helpful in analyzing the issue of lost sales and making price comparisons between domestically produced and imported products.

(10) Growers have been excluded from the definition of domestic industry in several cases including French Fried Potatoes from Canada, and more recently Wine from Europe. If the Commission is to exclude growers who are injured by reason of imports from relief under U.S. trade laws, what alternative remedies are available to U.S. farmers confronted by unfair trading practices?

I would not agree that the Commission necessarily excludes growers from the definition of the domestic industry in cases in which processed agricultural products are imported. In the countervailing duty investigations involving lamb meat from New Zealand and frozen orange juice concentrate from Brazil, the Commission found growers to be a part of the domestic industry. In both of these cases, there was a high degree of vertical integration among the domestic growers and the domestic producers of the products comparable to the imported articles subject to investigation. When the agricultural product enters a single, continuous line of production, resulting in one end product, the Commission's practice has been to include the growers in the domestic industry.

In the French Fried Potatoes case, the agricultural product could be sold in more than one product. Accordingly, the Commission focused on the U.S. producers most directly affected by the imported product, the processors. The Commission determined that the record did not support an affirmative determination with regard to the processors, the businessmen in direct competition with the Canadian product. The growers are more remote from the direct competition with that particular imported product. Assuming that the Commission had included the growers, the Commission would not have been able to find the necessary causation to find injury to the growers. In the European Wine case, there were three markets for grapes, two of them (raisins and table grapes) reacted to market factors unrelated to competition among wines. Moreover, there is little relationship between the prices of grapes and the prices of wines. Again, the Commission could not find injury to the wine bottlers competing directly with the imports under investigation. Assuming that grapes growers had been included in the industry, the record would not have supported the Commission's finding the requisite causation between the imports of table wine and the economic difficulties of the growers.

(11) What is the appropriate standard applicable in determining whether there is reasonable indication of material injury? There appears to be a lack of consensus among the Commissioners. The legislative history speaks in terms of the "possibility" of injury being sufficient for the preliminary determination, yet a much higher standard seems to have applied recently.

For preliminary determinations, the Commission is required to determine, based on the best information available to it at the time, whether there is a reasonable indication of material injury.

A "reasonable indication of material injury under the antidumping and countervailing duty provisions of the Tariff Act is the same standard of reasonable indication that was provided for under section 201(c)(2) of the Antidumping Act, 1921." The Senate Finance Committee put forth this standard in Senate Report No. 96-249. The standard as described by the House Ways and Means Committee was a "case in which the facts reasonably indicate that an industry in the United States could possibly be suffering material injury . . . " (H.R. Rep. 96-317, 96th Cong., 1st Sess., p. 52.) The application of the standard will depend upon the judgment of individual Commissioners.

(12) In determining whether prices for imports undersell U.S. producers or suppress or depress domestic prices, the Commission makes its comparisons on the basis of delivered prices to wholesalers. This analysis seems to ignore the price received by the domestic producers and the consequent injury caused to the producer. Why does the Commission look to delivered prices?

For many agricultural products (as well as for industrial products) we find that an analysis of delivered prices to wholesalers provides the most accurate means of comparing the prices of competing suppliers, both domestic and foreign. An analysis of delivered prices to a purchaser allows examination of head-to-head competition where many of the variables involved in comparing producer and importer prices have been eliminated. Major purchasers, including wholesalers, provide for both domestically produced and imported products of comparable quality, in comparable quantities, at the same point in time, based on delivering the merchandise to the same location. We believe that these prices provide the most effective means of measuring underselling.

Senator MITCHELL. I do want, however, to talk about this whole problem of big and small business. I think it's pretty well illustrated by this questionnaire which is attached to your statement. This is a 16-page questionnaire, 20-page questionnaire, which is quite detailed. And I will ask you—do you send the same questionnaire to everybody in these cases?

Chairman ECKES. Senator Mitchell, we work out a questionnaire that is appropriate to the investigation. I would like to invite Mr. Featherstone, who deals with it on a day-to-day basis, to respond to it.

Senator MITCHELL. Well, my question really is do you take into account the nature of the size of the petitioner. A question like this is no problem for United States Steel, for General Motors. But to a potato farmer in Maine this is quite an undertaking.

Chairman ECKES. You are quite right. With some small businesses, the response rate is relatively low. It does pose a problem. On the other hand, we need the information if we are to satisfy the legislative standards.

Senator MITCHELL. Well, I understand that. I would ask only that—see, what did I tell you? That thing is orange already.

To the extent that you can do so, I think it would be extremely—and not compromise your fundamental objective which is to gather sufficient data on which to make reasoned and informed judgments—that you take into account the nature of the petitioners and try to tailor this in such a way that we eliminate to the extent possible duplication, lengthy things that may be helpful but not essential to the process.

Mr. Holmer, you are free to talk until the red light comes on. [Laughter.]

Mr. HOLMER. Just to refresh the subcommittee's recollection, the issue related to the expedited procedures and that fact that they are——

[Laughter when red timer light comes on.]

Senator MITCHELL. Never waste time on preliminaries, Mr. Holmer. [Laughter.]

Mr. HOLMER. I will be very, very brief.

Senator Mitchell, I think you make a good and valid point. And I think it's a hard judgment call as to whether or not you provide an extra optional benefit to a small business. I talked initially about the fact that we do share your overall objectives, consistent with not undercutting the due process rights of each side. I think we also have a responsibility that if, on balance, we think that—if you, as drafters of this law, conclude that on balance there is an option that ultimately will probably hurt small businesses more than help them, my inclination would be not to make that additional change to include that option. If I were a small business and I were filing a case, it would probably be the first case that I had filed; I would assume that those folks at the Commerce Department could make a decision on a countervailing duty case and have it be just a final determination within that time period.

I think ultimately I would conclude that I was wrong, and that I needed that additional time, and that it would have been better to have both a preliminary and a final determination. And that's why we reached the conclusion on balance that even though that provision is optional, it probably made sense not to include it as an additional feature within the law.

Senator MITCHELL. Thank you, Mr. Chairman.

Senator DANFORTH. Are there further questions?

Senator CHAFEE. Mr. Chairman, one other question.

Mr. Holmer, I think in support of the position you are taking, I think it is important to stress that in these cases seeking relief there are domestic parties on the other side. If somebody comes in and seeks relief from imported steel, presumably those who use imported steel to fabricate products, and those who import it, also want to be heard. Am I not right?

Mr. **Holmer**. You are right, I assume, in theory. Although frankly in my experience, for example, those who were steel consumers we don't find to be active participants in dumping and countervailing duty proceedings on steel or other products where additional duties might have downstream impacts.

Senator **Chafee**. Well, that's curious because I represent a lot of people who are on the other side of the equation.

Mr. **Holmer**. The consumers.

Senator **Chafee**. Well, not solely the consumers. Usually we think of a consumer as somebody in their home. But I mean the consumer to the degree that they are buying the imported steel to try and produce a product that can compete in the world. I don't want to pick on steel. I don't want to wave a red flag in front of anybody on this podium. But these people are affected in any of these situations. So in any expedited procedure, I suppose we have got to remember that there are other Americans who are affected.

Mr. **Holmer**. That is a fair point. And I also would like to add one caveat to what I said earlier. While I have not seen it all that much with respect to steel, I certainly have seen it with respect to the textile industry. And appearances that have been entered on behalf of those who are importers of textile products from abroad.

Senator **Chafee**. Thank you.

Senator **Danforth**. Senator Heinz.

Senator **Heinz**. Mr. Chairman, one question for Mr. Holmer.

Mr. Holmer, in the list of provisions that you would support, I would agree with you that there are some significant elements in what you propose. I think eliminating the interlocutory judicial review could be of significant benefit in reducing costs. The single ITC hearing. The standing of labor or industry coalitions. Making the annual review at the request of petitioners. I think all of these are very worthwhile.

But let me go on, however, to ask you about one or two others. Would you support amending the law to clarify that sales rather than imports are a sufficient basis for investigation of antidumping and countervailing duty cases?

Mr. **Holmer**. Yes, I would.

Senator **Heinz**. Good. It's not going to be so tedious as feared. [Laughter.]

Would you support amending the law to require consent of the petitioners for the DOC to extend the time period of preliminary antidumping and countervailing duty determinations by determining that the case is extraordinarily complicated?

Mr. **Holmer**. We haven't confronted that issue as yet. I can cite you no administration position with respect to it. My initial reaction would probably be negative. I would hope that I could assure you that it's not a problem anymore. Since July 1983, Commerce has not extended a single case on the basis of it being extraordinarily complicated.

Senator Heinz. It sounds to me like Senator Chafee might be right after all. But we will look into that further.

Would you support amending the antidumping——

Mr. Holmer. Senator?

Senator Heinz. Yes.

Mr. Holmer. The difficulty that I think we have is that there will be cases involving novel and complicated questions, where we will genuinely need additional time to do the analysis. And if I were a lawyer for the domestic industry and I got a call from the Department of Commerce saying will you agree to us taking more time, I would say no. And it seems to me that's the problem you have.

If you have a situation where the administrators of the law are behaving responsibly, I don't think it would need to be changed.

Senator Heinz. Would you support amending the antidumping-countervailing duty laws to allow petitioners who filed such cases for the same products and countries at approximately the same time to apply for time limit extensions which would align the investigation times of each petition? The section would reduce the costs of these cases for all parties and the Government.

Mr. Holmer. To allow time line extensions?

Senator Heinz. To allow the necessary time limit extensions so that you can align cases if they have been filed by different parties so that they all take place at the same time rather than having very similar cases take place a week or two or three or four later.

Mr. Holmer. If we are tracking, the answer is yes. I assume that what we are talking about is establishing, for example, with respect to a countervailing duty case using the dumping timetable for both that case and for the dumping case. We would support that.

Senator Heinz. Do you support, again, for these kinds of cases, antidumping and countervailing duty, an amendment to provide enforcement authority to the Secretary of Commerce and the Secretary of Treasury for negotiated settlements based on the withdrawal of petitions?

Mr. Holmer. Can you say that again?

Senator Heinz. Do you support provision for enforcement authority to the Secretary of Commerce and the Secretary of Treasury for negotiated settlements based on the withdrawl of petitions? Right now, you have to go forward with the duties, and you do not have the authority to settle on some other basis.

Mr. Holmer. I think on that one we would need to submit a response to you in writing for the record.

Senator Heinz. All right.

I have one more question for Mr. Eckes, but I will submit it for the record, Mr. Chairman.

[The written question from Senator Heinz and Chairman Eckes' answers thereto follow:]

Answers of Chairman Eckes to Question From Senator Heinz

What is your view of sections 106 and 108 of S. 2139?

Section 106. Section 106 would amend section 771(7)(E) of the Tariff Act to require that the Commission consider the cumulative impact of imports subject to antidumping or countervailing duty investigations or orders.

The provision appears to codify current agency practice. The Commission presently employs a set of factors to determine whether the cumulation of imports from different countries is appropriate. These factors include: the volume of subject imports; the trend of import volume; the fungibility of the imports; competition in U.S. markets for the same end uses; common channels of distribution; pricing similarity; simultaneous impact, and any coordinated action by importers. The Commission also takes outstanding import relief measures into account in studying the impact of imports on domestic product markets. Current agency practice is discretionary, not mandatory. In the Commission's experience, there have been cases in which fungible imports from a particular country otherwise appropriate for cumulation, were available in such small quantities that their impact was not measurable and their presence in the market was marginal. In such situations, those imports have not been cumulated.

Section 108. Section 108 would amend the Tariff Act to provide special rules concerning the consideration of foreign subsidies, the time period in which to assess material injury, and the threat of material injury.

Section 771(7)(E)(i) of the Tariff Act would be amended to require the Commission to determine whether the foreign subsidies are export subsidies within the meaning of the international code on subsidies and countervailing duty measures. At present the Tariff Act requires that this finding be made by the Department of Commerce. In addition, the amendment would require the Commission to consider whether the foreign subsidies are related to promotion programs benefiting specific foreign industries within the meaning of the targeting provisions of the amendments proposed by the bill.

Both of these amendments would have important consequences for the manner in which the Commission conducts material injury investigations. In the case of evaluating the nature of a foreign subsidy to determine its conformity with the standards of the international code, the Commission would have to undertake consultations with foreign governments which are now undertaken only by executive branch departments. The Commission might also be placed in the position of characterizing sovereign acts as violative of international undertakings. In the case of determining the relationship of a foreign subsidy to a foreign targeting program, the Commission would have to investigate the foreign targeting process. Investigations of foreign government programs would require foreign travel, foreign language, and financial analysis resources which the Commission does not have at this time.

Section 771(7)(E) of the Tariff Act also would be amended to require that the Commission consider material injury in both a three-month period and a three-year period or, in response to a specific request by the petitioner, a period longer than three years. At present the Commission requests three full years of data in every antidumping or countervailing duty investigating. Three years was selected as being the longest period of time for which a business could reasonably be expected to have its records at hand and, accordingly, the least amount of burden of questionnaire respondents which would provide meaningful data. In addition, the accounting quarters for the current year and for comparison, a comparable period in the previous year are requested. The Commission does not generally request month-by-month data because of its susceptibility to distortion by lag times and different financial reporting periods. With regard to permitting petitioners the option of requesting data for longer than three years, I would question the proposal on a cost-benefit basis. The more historical the data, the greater the burden in the private sector to provide it. In contrast, the three-year period was chosen precisely because of the cost/benefit convergence.

Section 108 also would amend section 771(7)(E) of the Tariff Act to provide three specific areas for Commission consideration in determining whether a threat of material injury exists. The first would codify a Commission practice of considering the changes in amounts of domestic inventories of imported merchandise. The second would codify both the Commission's regulations which provide for consideration of the foreign capacity to produce and export the merchandise under investigation (19 CFR 207.26(d)) and the Commission's practice of considering the likelihood of shifts of production and exports among foreign industry product lines.

The third specific area is the existence of foreign targeting programs. This amendment would require agency capabilitities in new areas—financial resources for foreign travel and foreign language skills on the part of the Commission's investigative staff. Also, the provision would imply that the Commission develop an office to facilitate an ongoing ability to consult with foreign governments concerning such investigations, tasks currently performed by the executive departments. Again, the targeting inquiry would require an agency independent of the executive branch to characterize the act of foreign sovereigns.

Senator **Danforth**. Is there agreement on the part of the Commerce Department and the ITC that the appellant process now is too lengthy and that we should have direct appeal to the court of appeals?

Chairman ECKES. There seems to be a concensus that it is too lengthy. I would not want to say which appeals court it should be.

Senator DANFORTH. It should be one or the other, though?

Chairman ECKES. I think that's a resonable conclusion.

Senator DANFORTH. What's your view, Mr. Holmer?

Mr. HOLMER. The view of the Justice Department, which would be the administrative agency that would be responding on this, will be presented to you in writing. In general, I think it would be safe to say that Justice does not feel that we have had sufficient judicial review experience under the 1979 act to know whether its appeals procedures produce the best results in the most efficient manner. I know they do have concerns that with respect to appeals involving very technical or procedural issues, it may not make a lot of sense to have those questions go automatically to a three-person panel at the Court of Appeals for the Federal Circuit. And that it may make more sense to have those issues go to one person on the Court of International Trade. I guess that's an initial reaction. And I expect within the next day or two there will be a formal Justice Department position presented to you for the record.

[The written position from the Department of Justice follows:]

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 3, 1984.

Hon. ROBERT DOLE,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The following comments are directed to S. 1672, a bill to amend the trade laws of the United States to streamline trade relief procedures, to make trade relief more accessible to small businesses, and for other purposes. The Department's comments concern section 5 of the bill. On the remainder of the bill the Department defers to other interested agencies.

Section 5 to S. 1672 would transfer the jurisdiction to review administrative determinations in antidumping and countervailing duty proceedings from the Court of International Trade to the Court of Appeals for the Federal Circuit. We oppose this provision on the grounds that it would result in the inefficient use of the limited resources of the Court of Appeals for the Federal Circuit. In addition, we do not believe the limited experience we have had with the present judicial structure shows the need for the significant change proposed in section 5.

Currently, the Court of International Trade possesses exclusive jurisdiction to review challenges to antidumping and countervailing duty decisions rendered by the International Trade Administration of the Department of Commerce (ITA) and the International Trade Commission (ITC). This court and its predecessor, the Customs Court, possessed limited jurisdiction in this area for a number of years. The present jurisdiction was conferred on the Court by the Trade Agreements Act of 1979. Pub. Law 96-39, 93 Stat. 300, et seq. In addition, this act drastically changed the procedures and standard of judicial review in antidumping and countervailing duty cases.

Prior to the Federal Courts Improvement Act, which became effective in 1982, appeals from the Court of International Trade were prosecuted to the Court of Customs and Patent Appeals. The Federal Courts Improvement Act abolished the Court of Customs and Patent Appeals and the Court of Claims and transferred its jurisdiction as well as the appellate jurisdiction of the Court of Claims to a new United States Court of Appeals for the Federal Circuit. In addition to the jurisdiction possessed by its predecessor courts, the Court of Appeals for the Federal Circuit was granted exclusive jurisdiction to entertain appeals from decisions of the Merit Systems Protection Board and decisions of district courts in patent cases and cases arising under the Tucker Act. 28 U.S.C. 1346(a).

Given our limited experience under the present scheme, we believe that the changes proposed in section 5 of S. 1672 are premature. We have not had sufficient experience under the appeals procedures set out under the 1979 Trade Act to know whether those procedures produce the best result in the most efficient manner. We have had too few appeals under the Trade Act and too little experience in general with the Court of Appeals for the Federal Circuit, which has only been in existence for one year, to know whether the Court could handle a significant increase in cases.

In addition, given the short time since the Trade Agreements Act and the Federal Courts Improvement Act have been effective, it is too early to determine whether the many procedural questions presented in these cases are important enough to merit the attention of three appellate judges as opposed to a single trial judge. For example, many of the questions that have been presented in litigation in the Court of International Trade arising from antidumping and countervailing duty cases are about the administrative record. Neither the ITA nor the ITC conduct formal hearings in these cases. The proceedings are investigatory in nature. As a consequence, much litigation deals with the question of whether the record is complete. In addition, much of the material used is confidential in nature. Significant litigation has occurred over access to this confidential material. These types of questions could consume a large amount of appellate resources.[1]

Moreover, the Trade Agreements Act of 1979 authorizes the Court of International Trade to grant interlocutory injunctive relief in certain circumstances. Again, consideration of the question of whether interlocutory relief should be granted would occupy a large portion of the time available to an appellate tribunal.

Finally, it should be noted that, pursuant to 28 U.S.C. 1581(i) the Court of International Trade possesses exclusive jurisdiction to entertain some suits relating to the antidumping and countervailing duty acts which are not specifically set out in the Trade Agreements Act of 1979. If S. 1672 is enacted into law, we can expect that some jurisdictional confusion will arise. This will go against a primary purpose of the Customs Act of 1980 which was to eliminate the confusion in the jurisdiction between the district courts and the Customs Court in this area.

The Department of Justice recommends against the enactment of section 5 of S. 1672. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

Senator DANFORTH. All right. Let's try now to figure out where we go from here because this is the question that has been asked by every Senator on the panel. There is, as you can see, a lot of interest in this area, a lot of concern about the complexity, and the consumption of time, and cost in furthering one's rights under the trade laws.

It's my understanding that the Ways and Means Committee today is marking up a bill on trade remedies. We have a couple of bills at least that have been introduced in the Senate that we have been talking about today. A lot of people would like to see if we could get something passed this year. Maybe that's too much to ask for, given the limited time we have and the amount of work that Congress will have to be doing this year.

But my own view is that it's at least worth a try. I wonder if it would be possible for the Commerce Department, the ITC, the USTR to designate an individual—maybe you, and Mr. Eckes, and somebody from the USTR—to sit down and look at the various legislative things that are in the works, bearing in mind the kind of concern and complaints that you have been hearing; take into account the experience that you have gained in the last 4 years in administering the new trade laws, and come up with some specific legislative proposals that could be, hopefully, agreed on pretty quickly. But I would hope that it wouldn't be just a slap-dash matter. That is, my hope would be that you could sit down and say how can we make the trade laws more accessible to people with limited resources. How could we make this process fair and accurate and yet such that it would be available to ordinary people who are trying to do business in this country?

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[1] It should be noted that at least two appellate judges would be required to act on such questions. Currently, a single judge of the Court of International Trade decides these questions.

My guess is that if you did that—not with a big board of people—that if you just had three individuals spending a little bit of time in a very informal setting, you could think up some pretty good ways of streamlining it. And you, for example, Mr. Chairman, could say, well, here are the facts we really need. Here is the kind of information and the sort of timetable that we really need. Here are the kinds of cases that can be handled in a more summary fashion, perhaps, than others. And then come up with some good creative thinking on real streamlining.

But I would hope that if we did this, it really would be from the standpoint of the bona fide complaints that we have been hearing. Would that be a worthwhile exercise, do you think?

Mr. HOLMER. Absolutely. I think it's an excellent suggestion. And we would welcome it. We have already begun internally within Commerce doing it, and we have been working closely with the folks from USTR as well. Not exactly from the perspective that you have described here, and we also have not had the degree of interchange we might have had with the ITC. We would like to do that.

Senator DANFORTH. Do you agree with that, Al?

Chairman ECKES. We would be delighted to pursue it, Senator; yes.

Senator DANFORTH. Do you think it could be done? Granted this is a technical area, but do you think it could be done by three individuals sitting down in sort of an informal way, a creative way, rather than long, drawn out papers being written?

Chairman ECKES. We might need some input from you or your staff members.

Senator DANFORTH. And from the Senators. How long do you think this would take? I mean do you think in a month maybe you could come back? I suspect that you have already done a lot of thinking in this area. You certainly have, Mr. Secretary, because you have come up with, even in some cases, as you have pointed out, statutory language. Do you think that in a month you could distill the best thinking in your agencies and come up with some creative ideas?

Mr. HOLMER. Yes; I think that's a reasonable timetable. I think the three agencies could certainly reach agreement. We would then go through the process of getting it cleared interagency. That sometimes takes a little longer. But I would hope that we would be able to have that clearance done within a month as well.

Senator DANFORTH. Should we write you a letter or can you take this as sufficient charge to do it?

Mr. HOLMER. This is certainly sufficient from our perspective.

Senator DANFORTH. All right. Well, I think that that would be a good idea. And I would think that the more informal the brainstorming, the better, and the less you worry about it. My guess is that you pretty well know how the system should work. And what the strengths are and what the weaknesses are. You have seen all these ideas, and you have seen what the House is doing and so on.

I would like to do that. Then if you could come back in about a month or so and present your views, and maybe we could mark something up. Maybe Senators Cohen, Chafee, and Mitchell could reintroduce a bill that has the blessing of the administration and something that goes on with what the House has done.

Senator MITCHELL. I think it's a good idea, Mr. Chairman. I would like to make just a brief statement illuminating this issue. It doesn't make any sense at all. Mr. Chairman Eckes and Mr. Holmer, if you walk out on the street here and are charged with murder and you are tried and convicted, there is nothing more important to you or anybody else than your life or your liberty. You couldn't have two appeals, two court appeals. The areas of the law in which the number of appeals of this type are very limited. There are unique circumstances which just don't exist here. It doesn't make any sense at all to complicate the process. Notwithstanding the Justice's position, well, we don't know much about it, common sense tells us two reviews are not necessary. I hope very much you will consider that.

Senator DANFORTH. Thank you all very much.

Chairman ECKES. Thank you.

Mr. HOLMER. Thank you.

Senator DANFORTH. We will look forward to May 6.

Chairman ECKES. We will respond.

Senator DANFORTH. Next we have Michael Roush, National Federation of Independent Business; Dorothy Kelley, Maine Potato Council; and Thomas Gray, Dayglo Color Corp. on behalf of the Synthetic Organic Chemical Manufacturers Association.

Mr. Roush.

STATEMENT OF MICHAEL O. ROUSH, LEGISLATIVE REPRESENTATIVE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, DC

Mr. ROUSH. Thank you, Mr. Chairman. I'm here today representing the National Federation of Independent Business, an organization that represents some 560,000 small businesses across the country. And with the permission of the chairman, and in the interest of time, what I would like to do, rather than repeat what is written in my testimony——

Senator DANFORTH. All statements will be automatically put into the record.

Mr. ROUSH. Fine. What I will do is to put a Chinese lunch together of the portions of the two bills that we were asked to consider, as to which would be our preferred final mark-up bill. And very briefly.

We would like to see in the final bill section 2 of S. 1672, the expedited countervailing and antidumping duty procedures. We would like to see section 3 of S. 1672, the small business international advocate provisions, with the addition in that section, although it is to some extent nongermane to the initial considerations of the committee, for a provision that one of the functions of that international advocate, however titled, would be to include export promotion on behalf of small business.

Senator DANFORTH. That should be done by the Commerce Department right now.

Mr. ROUSH. Exactly. But we feel that it is not being done in the sense of a one-stop shop kind of concept where you can go to one place and get all the information you want.

Section 4 of S. 1672, the information on which preliminary determinations are based. Section 5 of both bills, which is basically identical language dealing with judicial review of certain actions by the Court of Appeals of the Federal Circuit. And, finally, we would like to see something along the lines of the language contained in section 6 and section 7(3)(a) of S. 50, dealing with the definition of material injury, and allowing for some kind of regional impact determination to be made in the cases. And, basically, that's our preferred bill.

Thank you. I will answer any questions.

Senator DANFORTH. Well done. You have given the staff some things to look up. Thank you.

[The prepared written statement of Mr. Roush follows:]

NFIB National Federation
of Independent Business
The Guardian of Small Business

STATEMENT OF

MICHAEL O. ROUSH
LEGISLATIVE REPRESENTATIVE

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before:	Subcommittee on International Trade of the Senate Finance Committee
Subject:	Access by Small Businesses to Trade Remedies, S. 50 and S. 1672
Date:	April 6, 1984

My name is Michael O. Roush, Legislative Representative for the National Federation of Independent Business (NFIB). On behalf of the 560,000 members of NFIB, I appreciate the opportunity to comment on the problem of access by small business to trade remedies.

In 1982, many small business owners found themselves facing a foreign competitor who could knock their socks off when it came to price on essentially equivalent products. The price differences were fueled as a result of more than just labor cost differentials; other contributing factors were an exceptionally strong dollar, export subsidies provided by foreign governments, and a system of duty preferences for "underdeveloped countries" listed under the Generalized System of Preferences (GSP), in which over 140 countries

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participate and are allowed to import more than 3,000 articles on a duty-free basis.

S. 50, introduced by Senator Cohen, and S. 1672, introduced by Senator Mitchell and cosponsored by Senator Chafee, both propose changes in how a small business utilizes the existing trade remedy procedures. Small business owners have been severely affected by heavily subsidized foreign competition in specific markets during the last few years as well as by the competitive disadvantage of the stratospheric level of the dollar against foreign currencies

I will outline several proposals, some of which are common to both bills, which NFIB believes would be most helpful to small firms encountering unfair foreign competition. Additionally, we will outline a concern which runs parallel to our concerns for import protection, that being export promotion.

BACKGROUND

If a small business feels that it is being injured by imports, it can request an investigation by the ITC to determine if trade rules are being violated. To obtain relief, it must attempt to demonstrate to the International Trade Administration (ITA) and the International Trade Commission (ITC) that subsidized imports are posing a threat to a domestic industry. An investigation would be initiated after the receipt by the Department of Commerce of a petition submitted by a qualified interested party. The following is an outline of the petition requirements:

a. General information on the petitioner, such as:

   1. The name and address of the petitioner;

   2. The industry on whose behalf the petition is submitted--including the names of other enterprises included in the industry; and

   3. A statement indicating whether the petitioner has initiated proceedings pursuant to other relevant U.S. trade laws (such as section 301).

b. Information on the subsidy alleged in the petition, which should include:

   1. A detailed description of the imported product that is alleged to be benefitting from the payment of a foreign subsidy--including its tariff classification under the Tariff Schedules of the United States;

   2. The name of the country or countries from which the merchandise is being or is likely to be exported to the United States (or the name of the country in which it is produced, if it is produced in a country other than the country from which it is being exported to the United States);

   3. The names and addresses of the companies in foreign countries that are believed to be benefitting from the subsidy and are exporting the merchandise to the United States; and

   4. All pertinent facts about the alleged subsidy, including, if known, the statutory authority or other authority under which it is provided, the manner in which it is provided, the manner in which it is paid, and the value of the subsidy when it is received and used by producers or sellers of the merchandise.

c. Injury-related information, such as:

   1. Information on individual sales (including customers) and prices thereof on sales to the United States during the period to be investigated;

2. The volume and value of imports of the merchandise from the country in question during the most recent 2-year period;
3. The names and addresses of enterprises believed to be importing the merchandise into the United States;
4. The names and addresses of other enterprises in the United States engaged in the production, manufacture, or sale of like merchandise;
5. Information relative to a consideration of whether subsidized imports are the cause of injury to a U.S. industry; and
6. Information necessary to substantiate a claim that "critical circumstances" exist in a case.

In addition to the burdensome paperwork required, the entire investigative procedure can take up to 10 months to conclude, whether the case is brought to Commerce or to the United States Trade Representative (USTR) as a section 301 case.

The following is a list of comments on problems brought to our attention by NFIB members, including the states where they reside:

> Imported sailboats built in Taiwan, Canada, and France. Canada taxes our boats on import, but Canadian boats enter our market tax free.
>
> Taiwan boats come in tax free. French boats provide twice the discount of domestic manufacturers to dealers because of government subsidies (Florida).
>
> Audio cassettes from Hong Kong are imported at 15 to 20 cents per unit, cheaper than U.S. companies can produce them (California).
>
> The flower industry is being decimated by competition from countries with GSP status (New Hampshire).
>
> A manufacturer of jogging trampolines wishes to import parts and is told he will have to pay duties on the imported parts.

However, trampoline manufacturers in Korea and Taiwan are allowed to import trampolines duty free (Utah).

Packaged flour tortillas producers from Mexico are allowed to undercut prices of domestic producers because of their GSP status (Texas).

75% of all fasteners come from overseas. In a national emergency we would be left with a 90-day supply (Texas).

Proposals to Resolve Small Business Problems

A. Expedited Duty Procedures

Senator Mitchell has proposed in S. 1672 legislation which could assist small business by streamlining trade relief procedures, thereby making those relief procedures more accessible to small business. Under the proposal, a petitioner could elect a fast track procedure in antidumping cases. This procedure would provide that Commerce make a decision on cases 75 days earlier by removing the need for a preliminary determination of damages. Under current procedures final determination in an injury case can take 10 months or more. This rule change is needed because very often a small business cannot survive long enough to wait for a determination.

B. Change in Basis for Preliminary Determination

S. 1672, introduced by Senator Mitchell, and S. 50, introduced by Senator Cohen, both have a proposal which calls for simplified procedures to be used by the ITC in preliminary injury cases. Under current procedures, the ITC has a very narrow and specific method of determining injury. In making its decisions, the ITC examines the impact of subsidized imports on the affected industry and requires an examination and evaluation -- "based upon the best information available to [the ITC] at the time of the determination" -- of all relevant economic factors and statistical indices which have a bearing on the state of the industry. This standard has been interpreted by the ITC as requiring exhaustive examination of all statistical evidence available on the industry. Senator Mitchell's proposal alters the tone of the statute by basing preliminary determinations upon "information available" at the time of the determination. This would allow for the inclusion of information from generally available public sources.

Senator Cohen's proposal mandates that a special standard be established to mandate the special circumstances that should be considered for small businesses in the information gathering process.

The combined benefit of an expedited duty procedure and the proposal for simplification of preliminary determination of injury would establish a new tone in Commerce dealings with small business. The recommended revised procedures would provide a type of regulatory flexibility by recognizing special small business problems in these types of cases.

C. Other Concerns -- Definition of Injury

To further advance a new tone in small business dealings with the ITC, the following concern needs to be raised. Special consideration needs to be given to changing the definition of injury under current ITC rules. Currently, a countervailing duty may only be imposed when it has been determined that a subsidized import threatens material injury to a domestic industry. For purposes of determining injury, "domestic industry" is defined as all domestic producers of the like products. Under certain exceptions, the ITC may consider the damages on a regional basis.

Concern over damages to an industry by considering the size of the firm is not allowed under these rules. For small business, this approach to injury could make a substantial difference. Due to size and other economies of scale, large manufacturers within an industry might well be able to survive dumping problems which a small business could not withstand. However, under the ITC definition, injury has not occurred, thereby precluding any trade remedies. The determination of injury is made on an industry level, which is concerned with the overall volume and price effects on an industry. The Department of Commerce publication states, "It is important to note that the entire industry must be found to be injured or threatened with injury." A new approach by the ITA and the ITC is needed which would determine injury on the basis of comparative size within an industry. This change would promote strongly the interests of small business owners who are so vulnerable to unfair foreign competition.

Neither proposal adequately addressed this point, and it is one which merits additional review and consideration for inclusion in any recommendations which this subcommittee might make.

Small Business Advocate

The concept of a small business advocate for international trade is the most intriguing concept in either bill from several perspectives. Under current Department of Commerce Rules, there is no one individual empowered to act on behalf of small business. While the ITC, ITA, and USTR are all empowered to act on behalf of the taxpayers if an industry is being injured, typically it is the industry which must take the initiative. As conceptualized in S. 1672, an Advocate will be authorized to assist small business in the preparation for and participation in any proceeding relating to trade laws, and will, on his own, initiate investigations in which, in the advocate's opinion, small business interests are at stake. Not only would the advocate's office provide assistance to small business in filling out forms, a function currently provided by Commerce and the ITC, the advocate could also participate in arguing the case of the small business before the ITC.

This assistance and oversight of small business concerns in matters of foreign trade would prove invaluable not just to small business, but to Commerce and government officials. For the first time they would have a representative with firsthand knowledge of the small business impact in injury determinations.

D. Judicial Review of Certain Actions by Court of Appeals for the Federal Circuit

Both S. 50 and S. 1672 contain provisions for allowing judicial review of final determinations to be made to the Court of Appeals for the Federal Circuit rather than the U.S. Court of International Trade. NFIB views this provision in both bills as positive.

Small Business Export Assistance

S. 50 and S. 1672 both promote concepts which can be adapted within the context of promoting international trade by domestic small business. NFIB is on record supporting the concept of a reorganized trade agency requiring a more coordinated approach to exporting by small firms. A recent study issued by the General Accounting Office (GAO) examined efforts to promote exports by small, nonexporting manufacturers. The study revealed that, in 1980, less than 1 percent of 3,433 firms that participated in commerce trade missions and fairs were small manufacturers who had never exported before. While the Department of Commerce estimates that approximately 11,000 manufacturers were capable of exporting, indications are that small business owners are reluctant to export because of little or no knowledge of the export market or process, indifference toward exporting, or preoccupation with the domestic market. Many small business manufacturers consider exporting as being very risky; this concern is borne out by several members who have exported in the past, but have encountered substantial difficulties in obtaining payment.

In response to several of the comments made by the GAO, in 1982 the Department of Commerce began a program to target small nonexporting firms. The study reveals that many small business manufacturers and nonmanufacturers could be induced to export if assistance were provided them in identifying markets and in arranging the necessary details.

The study states in very succinct terms why small businessmen are reluctant to export. First, there is clear evidence that many small businessmen have little or no knowledge of the export market or the export process. Second, small firm managers are preoccupied with the large domestic market and do not feel the need to export to make profits; they lack strong motivation to export. Lastly, some small manufacturers refrain from getting involved in exporting because it is perceived as being too risky, too complex, or beyond their capabilities.

Another study recently completed by the President's Private Sector Study on Cost Control also looked at the level of support which the Department of Commerce was providing small exporters through the ITA. The analysis demonstrated a very skewed distribution of exports by order size. One hundred sixty orders greater than $1 million (or 2.9 percent of all orders) totalled $1,235 million, or 80 percent of the total U.S. export volume. Four thousand five hundred thirty one orders smaller than $100,000 (or 8.1. percent of all orders) totalled $77 million, or 4.9 percent of all exports.

The ITA reviewed this data and decided that the agency was expending too much effort on a sector of the market that was exporting far too little in new exports. In July 1982, the ITA stated, "we have no choice but to curtail the resources expended on marginal firms and direct our efforts to those companies who meet the following criteria:

1) High export demand potential,
2) High technology,
3) strong R&D programs,
4) High value added lines,
5) strong capital structure or above average capital access,
6) high domestic market shares,
7) capability for sustained export market performance."[1]

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[1] President's Private Sector Survey on Cost Control, Task Force Report on the Department of Commerce, Section 2, p. 21.

Very few of the descriptions given above sound like a typical small business.

Within the newly proposed DITI, a new Office of Small Business Trade Assistance has been established, the purpose of which will be to:

provide full information to small business concerning remedies under the import relief laws;

provide assistance to small business in preparing petitions and applications for trade remedies; and

promote exports for small business and market access for small business.

NFIB Recommendations on an Expanded Small Business Advocate Role

The broad principals outlined above are stated in similar terms by the current Department of Commerce and the ITA in their attempts to broaden small business participation in exporting. It is the opinion of NFIB that a Small Business Advocate for International Trade as outlined in S. 1672 within either the current Department of Commerce--or the new DITI, if created by Congress--would be of greater assistance and may be the link which advocates of small business exporting have been searching for.

In practical terms, it would be the function of the advocate to engage in reaching out to small business by establishing a clearinghouse for trade remedies and for information to help small businesses export. The advocate would be empowered to bring together all the required ingredients necessary to facilitate small business exporting. The Advocate would:

1) provide to small businesses information on those countries which might be interested in their products and provide all the necessary information to a small business on the export process. It would also provide the necessary counseling and advice to insure export sales.
2) establish a clearinghouse of information on potential markets to small businesses.
3) work with a small business to insure that the perceived risk factor in exporting is minimized to the greatest extent possible.

NFIB believes that increasing the level of participation by small business in exporting will require more than just a vague statement of principal. A small business advocate for international trade developed along the lines discussed would provide concrete assistance small businesses would recognize. In addition, the advocate's office would be the leader in protecting small business by helping to ensure that foreign competition is not unfair in its impact on the small business segment of the economy.

Conclusion

While both S. 50 and S. 1672 promote assistance to small business in dealing with unfair foreign competition questions, it is NFIB's opinion that S. 1672 would, on balance, promote wider benefits and assistance to a larger part of the small business community than S. 50.

The proposals for assisting small business made by Senator Mitchell in S. 1672 would encourage domestic small business markets and would ensure that unfair foreign competition does not impact more heavily on the small business economy than on the larger businesses in an industry by providing the necessary simplifications in trade rules to ensure small business rights.

Of benefit to small business would also be the office of small business advocate for international trade to assist small business in dealing with unfair foreign competition and expanding into the export markets.

Thank you, Mr. Chairman.

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STATEMENT OF MS. DOROTHY KELLEY, EXECUTIVE VICE PRESIDENT, MAINE POTATO COUNCIL, PRESQUE ISLE, ME

Senator DANFORTH. Ms. Kelley.

Ms. KELLEY. My name is Dorothy Kelley, and I'm executive vice president of the Maine Potato Council, which is an organization that represents all potato producers within the State.

In 1978, the directors of the Maine Potato Council asked me to file a petition regarding the importation of Canadian potatoes. I worked up a countervailing duty petition and personally made a trip to Washington to work with the people in the International Trade Commission and the Department of Commerce.

After studying my documentation, they urged me to file an antidumping petition instead of a countervailing duty petition. I worked up the documentation. It took 4 months and the 30 copies were mailed to the ITC and the Department of Commerce, at the exact time that over 100 potato producers decided to blockade the border between Maine and Canada.

The administration sent a task force to northern Maine for a private growers' meeting, and I was not privileged to attend. However, they decided at this meeting that I should file a countervailing duty petition instead of an antidumping petition. A telephone call was received from the administration. My petition was denied, and I was requested to file the countervailing duty petition.

The process for filing a petition is cumbersome, statutory, lengthy, and perplexing for an individual. One agency with the knowledge of the tariff laws would be less confusing. During the 6 years that I have been traveling to Washington to meet with various representatives of the Department of Commerce, the USTR and the ITC, each agency has given me a different recommendation of the type of petition which to file.

In July 1981, we retained a Washington legal firm. Maine was granted a 332 investigation, and on February 9, 1983, after 6 years of frustration, the Maine Potato Council filed an antidumping petition against the importation of round, white Canadian potatoes. In March, the ITC voted to continue the investigation, and the last of July, Commerce granted a preliminary assessment of 17.3.

The final determination of Commerce in November gave us a 36.1 added assessment. However, in December 1983, the ITC denied the antidumping petition. It took 307 days from the filing date until the final determination. Since we are appealing the case, the action is still ongoing, and can take more than another year.

Small businesses and associations cannot afford this costly process. I know of agricultural commodities in the Northeast that are presently being injured by Canadian imports, such as onions and carrots and cabbage and blueberries, maple syrup and oats. They do not have the organization nor the finances to protect their livelihood.

From my experience of 6 years, I feel one agency to give direction is badly needed. I also feel the Government should cost share. By removing the preliminary determination, the cost and time would be reduced for the petitioner and the Government.

Thank you, Mr. Chairman, for allowing me to summarize my written statement.

Senator DANFORTH. Thank you very much.

[The prepared written statement of Ms. Kelley follows:]

TESTIMONY BEFORE
SENATE FINANCE SUBCOMMITTEE
ON
INTERNATIONAL TRADE

BY

DOROTHY P. KELLEY, EXECUTIVE VICE PRESIDENT

MAINE POTATO COUNCIL

Mr. Chairman and Honorable Members of the Committee:

My name is Dorothy Kelley. I am the Executive Vice President of the Maine Potato Council, which is an organization that represents all commerical potato producers within the State of Maine. The Maine Potato Council has great interest in S-50 as well as S-1672. We have encountered many problems over several years in seeking relief from the importation of Canadian potatoes.

Our concern began in 1975, at which time we wrote several letters to trade negotiator Robert Strauss regarding the subsidies that the Canadian potato producers enjoyed at that time. In the year 1975, Canadian officials were developing a plan to increase potato production for exports. The plan included a proposal for the Province of New Brunswick to develop an increased potato production from 10.8 million hundredweight to 14 million hundredweight in 1983 and the purpose of this strategy, so stated in the plan, was to increase the export of potatoes by 40%, not only offshore but also the United States.

In past years, the United States has exported more potatoes into Canada than they exported to us. However, since 1979, the Canadians have exported more potatoes to the Eastern United States than the United States producers exported to them through the West. Since the year 1976 to 1981, imports of Canadian potatoes to the United States have increased by 700%.

In 1978, the Directors of the Maine Potato Council asked me to file a petition regarding Canadian imports. The Maine Potato Council retains a local attorney in regard to agricultural problems within the area, and when I asked him to help file a petition with the International Trade Commission, he apologized and said it was impossible for him to do. I then tried to seek the help of the legislative aides of the attorney general in the State of Maine and received the same reply - that they had no idea how to go about filing a petition with the International Trade Commission and the Department of Commerce.

Since I had been directed by my organization to file a petition, I worked up a draft of a counter-vailing duty petition and personally made a trip to Washington for the officials of the International Trade Commission and the Department of Commerce to study my draft proposal and to give assistance and advise. May I add that the officials and staff of the International Trade Commission and the Department of Commerce have been very helpful through the many years that the Maine Potato Council has been seeking some relief. After studying the statistics and documentation that I had, the officials of the International Trade Commission and the Department of Commerce urged me to file an anti-dumping petition. I returned to Maine and spent four months gathering statistics and documentation. The documentation of injury is nearly impossible on a perishable commodity. Most sales of agricultural commodities are made via the telephone and therefore, there is no documentation or daily log. Buyers who purchase Canadian potatoes instead of Maine's are very reluctant to provide you with information needed for a petition. The U.S.D.A. informed me that buyers import Canadian potatoes since they are premium potatoes and I maintain that the premium is in the price due to the difference in the exchange. Canada now packs 2¼ inch minimum potatoes. Maine also packs 2¼ inch potatoes if the buyer requests this size. However, Maine's 2¼ inch sells for a higher price than the U.S. No. 1's, which is 1 7/8 inch minimum. Therefore, the buyer imports the Canadian 2¼ inch potato since the difference in the exchange gives him an extremely high price advantage.

In regard to the premium potatoes, back in 1980, I convinced the Maine Governor Brennan to inspect a few of the Canadian trucks coming across. At that time, he put federal/state inspectors on the border and they checked fifteen (15) loads of table-stock potatoes. They were inspected as Canadian #1 grade and five of the fifteen loads failed to make the Canada No. 1 grade. Had the loads been graded U.S. No. 1, there would have been ten loads out of the fifteen that would have failed to make U.S. No. 1.

After four months of constant work on an anti-dumping petition, thirty copies were mailed to the International Trade Commission and the Department of Commerce. At this time, some hundred Maine potato producers blocked the border between Maine and Canada and the administration immediately sent a task force to northern Maine for a private meeting of a select group of growers. I was not privileged to attend. However, it was decided at this meeting that I should file a counter-vailing duty petition instead of the anti-dumping petition. A telephone call was received from the administration on the return of the task force to Washington and I was informed of this decision. The calling party suggested that the anti-dumping petition, which I had filed, would be denied before it was published in the federal register. and they requested that I start a counter-vailing duty petition.

I attempted to file a counter-vailing duty petition which was actually much easier to write and to document because of the various known subsidies, however, I still could not document the injury. I turned the second counter-vailing duty petition over to the economic professors of the University of Maine they too found documentation of injury impossible. Although I could document grants, industry loans, freight subsidies, to a total of thirty assistance programs, which the Canadians like to call them, it seems like some of these are not considered subsidies in regard to counter-vailing duties. A subsidy under counter-vailing duty is something that is granted and directed for export only.

When a government back in 1975 decided to do everything possible to increase the potato production from 10.8 million hundredweight to 14 million hundredweight by 1983 for the purpose of increasing exports by 40%, it seems logical to me that any assistance given to potato producers was in an effort to increase exports.

Canada takes quick action if a commodity is not needed. In July of 1982, Canada closed the border to bulk shipments of potatoes coming out of Virginia, Delaware, and North Carolina. Normally these potatoes of the Eastern shore states go to Canada, but Canada found themselves with an abundant supply of potatoes and, therefore, would not allow U.S. potatoes to enter.

Last winter, Canada found U.S. onions selling below the price Canadian producers were receiving, and the Canadians established a sur-tax on U.S. onions. The tax was the difference between the U.S. price and the Canadian price.

Canada also closed the border to seed potatoes from Idaho, Washington state, and Oregon.

The process for filing a petition is cumbersome, statutory, lengthy, and perplexing for an individual who has no legal background and represents a small agricultural industry. Therefore, it is absolutely necessary to seek the assistance of a tariff attorney. It is very difficult for a small industry to decide which way to go. There are many types of petitions that maybe filed, but they are very complex and require the knowledge of someone versed in the material necessary for documenting the various types of petitions. At the present time, some mebers of the staff of the International Trade Commission, the Department of Commerce, and the Speical Trade Representatives office can assist a petitioner, however, one can become very confused in the complexity of the various types of petitions, and it is perlexing to know where to seek the help.

One agency with knowledge of the tariff laws would be less confusing to a petitioner and this one agency could give practical advice in regard to the best type of petition to use for each individual case. During the six years I've been traveling to Washington to meet with various representatives of the Department of Commerce, International Trade Commission, and Special Trade Representatives, each individual has given me different recommendations as to the type of petition the potato industry should file. One trip was made to learn about filing a 201 and later a trip was made to hear the benefits of a 301 petition. All the advice becomes very perplexing to the average layman, thus one agency looking over the documentation and then giving direction would be a great value. It would save time and money for the small business or association since trips to Washington are costly.

The best advice the potato industry received was to get a tariff attorney so in July of 1981, the Maine Potato Council retained a Washington legal firm which began investigating the amount of injury.

In March of 1982, Maine was granted a 332 investigation on Canadian potatoes coming into the United States. The investigation continued until mid-August. The 332 investigation did produce some documentation needed for filing a petition.

On February 9, 1983, after six years of frustration, the Maine Potato Council filed an anti-dumping petition against the importation of round white Canadian potatoes.

On March 22, 1983, the International Trade Commission gave a positive vote to continue the investigation. The last of July, the preliminary determination of the Department of Commerce came out positive and granted a preliminary 17.3% added assessment on the imported value of Canadian round white potatoes. The final determination of the Department of Commerce in November gave a 36.1% added assessment on the imported value of the product. However, on December 12, 1983, the Commissioners of the International Trade Commission denied the anti-dumping petition of the Maine Potato Council.

It took 307 days from the filing of the petition until the final determination. Since we have appealed the case to the Court of International Trade, the action is still on-going, and this action can take up to a year if the court accepts the appeal. The International Court has 60 days to determine if the appeal will be accepted or denied. This means the time from filing the petition through court appeal could take two years. Small businesses could be forced out of business in this time space. I have no idea how long it would take for action by the United States Court of Appeals, but this should be investigated.

My travel expense over the six years has amounted to over $68,000 and the legal fees will be a minimum of $250,000. The cost of a transcript for the attorney was $960.00 or $4.28 a page.

Small businesses and associations cannot afford this lenghty costly process. I know of many agricultural commodities in the Northeast that are presently being seriously injured from imports such as onions, carrots, cabbage, blueberries, maple syrup, and oats. They do not have the organization nor the finances to take action to protect their livelihood, and the only legal action seems to be by petition or legislation.

From my experience of six years, I feel one agency to give direction and advice is needed. Also for small business and associations, the government should cost share and by removing the preliminary determination, the cost and time would be reduced for the petitioner and the government.

Thank you for allowing me to relate the problem of one small association attempting to protect their industry from unfair imports.

STATEMENT OF THOMAS J. GRAY, VICE PRESIDENT, DAYGLO COLOR CORP., ON BEHALF OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION, INC.

Senator **Danforth**. Mr. Gray.

Mr. **Gray**. My name is Thomas Gray. I'm vice president of Dayglo Color Corp., and vice chairman of the International Trade Committee of SOCMA, the Synthetic Organic Chemical Manufacturers Association. I have with me Mr. Hinds, counsel for SOCMA.

SOCMA is a nonprofit association of producers of synthetic organic chemicals. The majority of our members are small companies, all of whom have a strong interest in the availability of unfair trade remedies to small businesses.

We strongly support the legislative initiatives of Senators Mitchell, Cohen and Chafee to make U.S. unfair trade remedies truly available to American small business. The extensive delay before relief from dumped or subsidized imports can be obtained, the high cost of seeking such relief, and the difficulty small business has in obtaining the information required to seek relief are almost insurmountable obstacles for small companies.

As a result, the present system of trade remedies is an ineffective and little used system for small companies injured by foreign competition. As set forth in more detail in our written statement, we believe that S. 50 and S. 1672 provide an excellent framework for seeking modification to the trade remedy laws.

I would like, however, to take this opportunity to emphasize two key points. First, we strongly support the fast track option—I guess from what has been said, I should emphasize the word "option"—for antidumping and countervailing duty complaints contained in S. 1672. Small businesses cannot afford interminable administrative proceedings, with all the cost in time and resources that they entail. Providing the fast track option is an important first step in making unfair trade relief available to small business.

As we point out in our written submission, we believe that it is equally important that liquidation of import entries be suspended at an earlier stage of the unfair trade proceedings, whether the proceedings are expedited or not. After the Department of Commerce has found a petition states a case and the International Trade Commission has made a preliminary affirmative determination of injury, liquidation of entries should be suspended so that dumping or countervailing duties can be assessed on such imports if appropriate as of that preliminary determination. This would make relief more prompt and would prevent foreign producers from flooding the domestic market before a preliminary determination is made by the Department of Commerce months later.

This window of vulnerability should be closed. It is interesting to note that S. 1672 actually in the fast track would increase that window by 15 days.

Second, we strongly support the creation of an office within the Department of Commerce to assist small businesses seeking relief under the unfair trade laws. Such an office could help balance the advantages that foreign producers often possess over the small domestic producers.

The office should be authorized to provide assistance to small businesses in obtaining information, filing complaints and establishing the right to relief under unfair trade laws. It should also be authorized to reimburse small business petitioners for at least some portion of the cost of bringing such proceedings.

In summary, we support and applaud the subcommittee's efforts to give small business a viable remedy for unfair trade practices.

Thank you.

Senator DANFORTH. Thank you, sir.

[The prepared statement of Mr. Gray follows:]

April 6, 1984

TESTIMONY OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION REGARDING THE NEED TO REVISE U.S. UNFAIR TRADE LAW REMEDIES AVAILABLE TO SMALL BUSINESS

My name is Thomas J. Gray, Vice President of Day-Glo Color Corporation and Vice Chairman of the International Trade Committee of SOCMA, the Synthetic Organic Chemical Manufacturers Association. SOCMA is a nonprofit association of producers of synthetic organic chemicals. A majority of our members are small firms, which have a strong interest in the availability of unfair trade remedies to small business.

We strongly support the legislative initiatives of Senators Mitchell, Cohen and Chafee to make U.S. unfair trade remedies truly available to American small business. The extensive delay before relief from dumped or subsidized imports can be obtained, the high cost of seeking such relief and the difficulty small business has in obtaining the information required to seek relief are almost insurmountable obstacles for small firms. As a result, the present system of trade remedies is an ineffective and little-used option for small chemical companies injured by foreign competition.

As set forth in more detail in our written statement, we believe that S. 50 and S. 1672 provide an excellent framework for needed modifications of the trade remedy laws. I would like to take this opportunity to emphasize two key points.

First, we strongly support the "fast track" option for antidumping and countervailing duty complaints contained in S. 1672. Small businesses cannot afford interminable administrative proceedings, with all the cost in time and resources they entail. Providing the fast track option is an important first step in making unfair trade relief available to small business.

As we point out in our written submission, we believe that it is equally important that liquidation of import entries be suspended at an earlier stage of unfair trade proceedings, whether the proceedings are expedited or not. After the Department of Commerce has found a petition states a case and the International Trade Commission has made a preliminary affirmative determination of injury -- which occurs within 45 days of filing a petition -- liquidation of entries should be suspended so that dumping or countervailing duties can be assessed upon such imports if appropriate. This would make relief more prompt and would prevent foreign producers from flooding the domestic market before a preliminary determination is made by the Department of Commerce months later. This "window of vulnerability" should be closed. I note that S. 1672 would increase it by 15 days.

Second, we support the creation of an office within the Department of Commerce to assist small businesses seeking relief under the unfair trade laws. Sucn an office could help balance the advantages foreign producers often possess over domestic small businesses. The office should be authorized to provide assistance to small businesses in obtaining information, filing complaints, and establishing the right to relief under unfair trade laws. It should also be authorized to reimburse small business petitioners for at least some portion of the cost of bringing such proceedings.

In summary, we support and applaud the subcommittee's efforts to give small business a viable remedy for unfair trade practices. S. 50 and S. 1672 provide a sound basis for making relief under our laws effectively available to all American business enterprises, both large and small.

I would be happy to answer any questions.

Senator **Danforth**. Senator Mitchell.

Senator **Mitchell**. Mr. Chairman, I merely want to thank all of the witnesses for their testimony. Anyone who thinks that the trade laws are easy to use ought to, I think, study carefully Dorothy Kelley's testimony here today. It's a very difficult, expensive time that the Maine potato industry has had. I think it's the kind of tangible evidence that supports the need for this legislation. I thank both Mr. Gray and Mr. Roush, especially. There might be a tendency for some to regard this as a local or regional matter, both in terms of geography and in sections of industry. As Mr. Roush represents several hundred thousand businessmen all over the country, and his testimony here today in support of legislation, I think, makes clear that this is truly a national problem in every respect.

I thank all of you.

Senator **Danforth**. Thank you all very much. I don't really have any questions for you. I think you have done a very good and succinct job of testifying. And, as indicated earlier, it's my hope that we will be back at this with some specific proposals from the administration within the next month or so. I would invite each of you to be watching for that. I'm sure you will be. And we would like your comments at that time.

Thank you very much.

Mr. **Gray**. Thank you.

Mr. **Roush**. Thank you.

Senator **Danforth**. Next we have Mr. John Lison, Allied Pipe & Conduit Corp.; Mr. William Pinkerton, Pinkerton Foundry; Robert Wolcott, Jernberg Forging Co.; and Kenneth R. Button, Economic Consulting Services.

STATEMENT OF JOHN M. LISON, GENERAL COUNSEL AND VICE PRESIDENT, ALLIED PIPE & CONDUIT CORP., HARVEY, IL

Senator **Danforth**. Mr. Lison.

Mr. LISON. Mr. Chairman, my name is John Lison. I'm vice president and general counsel of Allied Pipe & Conduit. We are manufacturers of conduits, fence and fire protection pipe, located in Harvey, IL.

We are also cochairmen of what we call a Committee on Pipe and Tube Imports. That's a group of 13 domestic companies that represent the interest not only of ourselves, but approximately 125 other firms in our industry. Almost all of the firms in our industry are small business. In the aggregate, we employ throughout the United States well over 50,000 people.

Our committee wholeheartedly supports S. 1672 and S. 50. In our view, every measure, any measure whose objective is to simplify and streamline the existing trade laws of the United States is greatly needed. I say this out of our own personal experience. We have self-initiated and prosecuted, our committee has, one countervailing duty case, three antidumping cases. We have intervened as parties in two other cases. And from our own experience, we can fully attest to the fact that the pursuit of these remedies under the existing laws is extraordinarily expensive, extraordinarily complex, very burdensome.

One of the things that I wish to bring to your attention is that one of the cruelist blows in this whole process is that having gone through the process, having endured the expense, the complexity, the burdensome nature of pursuing these remedies is that often when you win, you lose. You create a vacuum in the market by winning. We have experienced that in the case of Taiwan. We have succeeded in determining or the dumping duties were determined well in excess of 35 percent. The preliminary margins were over 60 percent. When they began to stop importing their products, we began to see products come in from other countries.

We have prosecuted these cases, all of which involve the same kind of merchandise or products against South Africa, Taiwan, Mexico, and South Korea. We are beginning now to see increased imports from Brazil, Venezuela, Spain, and Argentina. This is not to mention capacity that exists in India, the Philippines, Yugoslavia, the European Community, Japan, or others. We feel that in your consideration of these measures that some action ought to be taken to insure that having prosecuted or companies or industries having prosecuted the trade laws and obtained the remedies with one particular kind of goods that somehow the burden shifts away from domestic industry to the government to enforce those laws themselves.

I call your attention particularly to, in the House bill, the Trade Remedies Reform Act, an amendment offered by Mr. Rostenkowski which would shift that burden from the domestic industry to the Department of Commerce.

Thank you.

Senator DANFORTH. Thank you, sir.

[The prepared statement of Mr. Lison follows:]

SUMMARY
OF TESTIMONY PRESENTED ON BEHALF OF THE COMMITTEE ON PIPE AND TUBE IMPORTS

BY: JOHN M. LISON, ESQ.
VICE PRESIDENT AND GENERAL COUNSEL
ALLIED TUBE AND CONDUIT CORPORATION

1. The United States pipe and tube industry consists of generally small, efficient, modern and highly competitive producers.

2. Domestic pipe and tube producers are being seriously injured by unfairly priced imports from foreign producers.

3. CPTI is a coalition of 13 domestic pipe and tube producers which pooled resources to obtain relief under the trade laws. We have filed three trade actions and are very familiar with the problems imposed on small domestic firms that do not have adequate resources to petition the Commerce Department.

4. We cannot afford the cost of filing multiple trade cases in order to chase unfairly priced imports that migrate from country to country.

5. We support S. 50 and S. 1672 which are designed to streamline trade relief procedures and make trade relief more accessible to small producers.

6. The Commerce Department must be required to exercise its authority to self-initiate investigations of unfair trade practices, at least in the most egregious cases where diversion of unfairly priced imports is threatened.

7. CPTI requests your support for the adoption of amendments to the trade laws which will address the problems of cost and accessibility of trade remedies as well as the significant problem of the need to bring multiple trade cases to avoid diversion of unfairly priced imports.

INTRODUCTION

Mr. Chairman, I am John Lison, Vice President and General Counsel of Allied Pipe and Conduit Corporation. I am appearing today with our counsel Mr. Mark Sandstrom of the law firm of Thompson, Hine and Flory. I am honored to appear before the International Trade Subcommittee of the Committee on Finance to discuss the problems that small businesses incur in attempting to seek relief under the trade laws. Specifically, I will describe the present condition of our industry and our concern that the trade laws do not currently provide effective relief for viable and efficient small and independent companies, including U.S. pipe and tube producers.

Allied serves as Co-Chairman of the Committee on Pipe and Tube Imports (CPTI), a group of thirteen domestic pipe and tube manufacturers located throughout the United States. There are 125 firms located throughout the United States that produce pipe and tube products and these firms currently employ approximately 50,000 workers. We are a modern, cost efficient industry using the newest technologies, and we do not require or seek "protection" from fair imports. Pipe and tube producers are not obsolete, and their demise is not economically inevitable, because we are competitive with producers around the world.

CPTI member companies have plants in thirteen states--Arizona, Arkansas, California, Georgia, Illinois, Louisiana, Massachusetts, Missouri, North Carolina, Ohio, Pennsylvania, Texas and West Virginia. Many of these companies were participants in a previous joint project to obtain coverage for their products under the Trigger Price Mechanism (TPM). CPTI was formed by companies that pooled their resources in an attempt to obtain relief under United States trade laws from unfairly priced imports which flooded the United States market after suspension of the Trigger Price Mechanism (TPM). Within the past year, the CPTI has filed one countervailing duty case and three antidumping cases against unfairly priced imports of our products.

Our primary concern is that as we win a case against dumped or subsidized products from one country, the producers in other countries move in to take up the vacuum through unfairly priced imports. Our companies are unable to continue to pay the high costs of filing and participation in additional trade actions against foreign unfair trading practices as they periodically migrate from country to country. The Commerce Department must be motivated to exercise its existing authority to self-initiate investigations of unfair import practices, at least in the most egregious cases where trade cases have already been filed for the products of concern. This would reduce the burden on domestic industries and particularly smaller businesses, to file multiple trade actions.

BACKGROUND

Let me give you a general description of the pipe and tube industry in this country. We are new in comparison with the basic steel industry and we have impressive statistics for tons of pipe and tube production per man-hour of labor. No one in the world does it better than we do.

Even though our labor costs are higher than those of our foreign competitors, it is important to know that the differences in labor costs cannot possibly explain the differences in sale prices of domestic products and imported products. Let me give you a brief overview of the role that labor plays in production of a ton of pipe and tube. First of all, the major cost input in the production of a ton of pipe and tube is the flat-rolled steel coil. Domestic pipe and tube manufacturers can and do purchase their flat-rolled steel from foreign sources as well as domestic producers. Thus, U.S. producers can begin with the same raw material cost that is available to foreign manufacturers. We then must consider the conversion costs for transforming the flat-rolled coil into a tubular product, which is normally $80 to $100 per ton for black pipe. Of that amount, approximately $35 to $45 is attributable to manufacturing labor and the rest is allocable to the cost of the machinery and facilities, their operation, energy, etc. Thus, total labor cost accounts for only seven to ten percent of the sales price of black pipe. For a galvanized product there is an additional 25% cost factor, which is primarily attributable to the cost of the zinc for galvanizing, but again labor accounts for only seven to ten percent of the total sales price.

So third world countries with labor rates only one-third of those in the United States can never explain a legitimate cost differential of more than six or seven percent. The difference in labor rates between the United States and our foreign competitors clearly does not account for the tremendous margins by which these competitors are undercutting the price of our products. In essence, if imported products were fairly priced, domestic producers could readily compete with foreign producers and be operated profitably.

I believe that my company, Allied Tube and Conduit Corporation located in Harvey, Illinois is an excellent example of the highly competitive nature of the companies in our industry. Allied has been in business since 1960, when it was founded by its President, Theodore H. Krengel, on the basis of his patented in-line process for manufacturing galvanized tubing. This process has been licensed in nine countries throughout the world.

Our company grew to its present position essentially because of our ability to develop unique products for various end user markets and because of our distribution capabilities, coupled with our manufacturing efficiencies and customer market development concepts. We are one of the major suppliers of fence and sprinkler tubular goods in the United States. We also serve a large number of mechanical tubing end-user markets, such as outdoor recreation and sports equipment and juvenile furniture. We are certainly one of the most efficient manufacturers of galvanized tubular goods in the world because of our patented, unique manufacturing process and our continuing investment in modernizing and upgrading our manufacturing equipment and facilities. It should be pointed out that while Allied may be the most efficient domestic producer of its products, the other members of the Committee on Pipe and Tube Imports are also highly efficient producers, and most of them have new, state-of-the-art facilities.

Nonetheless, we find ourselves in a deplorable position in certain of our businesses because foreign suppliers have cut their prices so drastically that our sprinkler pipe and fence tube divisions are operating at dangerously low net margins. At the present rate of decline they will not remain viable businesses. Our sprinkler pipe division, although relatively new, has substantial opportunity to grow, allowing us to expand our facilities and employ more people, because of dramatic opportunities to increase the overall usage of this cost-effective and safety-related product. However, rather than enjoying this opportunity, we are encountering competition from unfairly priced imports that are cutting directly into our sales. We have watched our profits consistently erode since Commerce dismantled the TPM program, and other companies have gone from black to red figures.

S. 1672 and S. 50

CPTI supports S. 1672 and S. 50, legislation addressing some of the major problems associated with the ability of small businesses to effectively obtain relief under U.S. trade laws. We believe these measures are a good starting point for making U.S. trade laws more accessible and effective for small and medium-sized domestic companies.

Section 2 of S. 1672 proposes expedited countervailing duty or antidumping procedures. In our experience in bringing trade actions, we have found that the process is too lengthy considering that only prospective relief is granted. While cases are pending, the violations may increase substantially. Foreign producers are basically given a year to sell unfairly priced goods in the United States marketplace from the time a domestic producer decides to file a trade case. The fast track approach proposed in S. 1672 would limit the time foreign producers have to abuse the system. It would also reduce the amount of time domestic petitioners have to devote to this cumbersome process and the amount of money which must be spent on legal fees.

S. 1672 and S. 50 would also create within the Department of Commerce a Small Business Advocate for International Trade to assist small companies like ourselves. The Small Business Advocate would argue at the agency level on behalf of domestic petitioners who do not have adequate resources to prosecute fully antidumping and countervailing duty investigations. The Advocate would also be able to exercise the Commerce Department's existing authority to initiate cases on behalf of small producers. We believe the Commerce Department must be motivated to self-initiate investigations of unfair import practices, at least in the most egregious situations. Establishment of a Small Business Advocate for International Trade will help develop in the Department of Commerce the activist role which is authorized by law but seldom utilized.

These bills address some important problems concerning small domestic producers who are injured by dumped and subsidized foreign goods. However, one critical problem which is not being fully addressed by the Congress is the fact that our industry and many others are forced to file multiple trade cases as unfair imports are persistently diverted from country-to-country.

THE NEED FOR BETTER SELF-INITIATION PROCEDURES IN THE COMMERCE DEPARTMENT

Since the government abandoned the TPM program, our industry has experienced severe price cutting by foreign competitors, to levels well below the last trigger prices and in several cases, below the cost of raw materials. We also experienced a simultaneous surge in the level of import penetration.

The United States pipe and tube industry was first injured by highly subsidized products from South Africa. CPTI filed a successful countervailing duty case against South Africa where margins of 25% and 30% were discovered. A suspension agreement was signed by the Commerce Department and the South African companies over CPTI's objections. We then detected that many of our customers were buying outrageously low priced products from Korea and Taiwan. CPTI currently has antidumping petitions pending against Korea and Taiwan. We recently obtained affirmative final determinations against these two countries with margins ranging from 0.22% -43.7%. We are now seeing other countries such as Brazil, Mexico and Venezuela who are dropping prices to gain a share of the market captured by Korea and Taiwan before CPTI challenged those countries.

Each time we file a case, and particularly if we are successful--as we have always been--we create a vacuum in our market which producers in other countries fill through increased shipments which enter the United States in violation of our trade laws. The relief we have obtained to date will be essentially worthless unless we continue to file additional cases, which we cannot afford to do, or unless the government takes steps to insure that egregiously low priced imports will be counteracted.

We believe that the problem of domestic industries filing multiple trade cases must be addressed by the Congress. Because our industry is unable to bear the cost of bringing the cases necessary to curb the flow of unfairly priced imports from so many different countries, the Commerce Department must be motivated to exercise its existing authority to self-initiate trade cases in the most egregious cases where trade actions have already been filed for the products of concern.

CPTI has worked with the Ways and Means Committee during their deliberations on improvements to the trade remedies law. On Tuesday, April 3, the Ways and Means Committee adopted an amendment to H.R. 4784 which would provide for the monitoring of imported merchandise which have been proven to be unfairly traded through an affirmative determination in antidumping cases. Under the provision now contained in Section 104 of H.R. 4784, a domestic petitioner may request that the Commerce Department monitor imports of a particular product from a particular country when the petitioner has brought successful antidumping cases against other countries for the same product within a two-year period. The Commerce Department would have twenty days to decide whether sufficient information is available to self-initiate an expedited antidumping investigation.

We believe that the action taken by the Ways and Means Committee is an important step for smaller companies that are fighting unfairly traded imports. Better self-initiation by the Commerce Department will address the problems of cost and accessibility of trade remedies. The proposal would not increase administrative burdens, rather it would eliminate multiple trade cases with their tremendous cost and burden on both the public and private sectors. Finally, there is a better opportunity to deter foreign producers from dumping products that have already been subject to investigations.

We respectfully request that the Subcommittee consider our problem and provide us with its comments. We hope to work with you to develop a solution which will avoid the problems of persistent diversion of unfairly priced imports and the consequent need to file multiple cases.

CONCLUSION

Let me take this opportunity to thank the members of the International Trade Subcommittee for allowing us to testify regarding S. 50, S. 1672 and issues of concern to the domestic pipe and tube industry. All of us hope that the future of the pipe and tube industry in this country will be much brighter, and that the investments which companies like ourselves have made in new plant, equipment and facilities will produce the returns we expected. We hope that, as a result of our discussions, we can work together on a legislative initiative that will give our industry an opportunity to compete once again with fairly priced imports.

Thank you.

STATEMENT OF JIM PINKERTON, PINKERTON FOUNDRY, INC., LODI, CA

Senator DANFORTH. Mr. Pinkerton.

Mr. PINKERTON. Mr. Chairman, my name is Jim Pinkerton. I am representing the subcommittee of the Municipal Castings Fair Trade Council. And you make me very nervous. It's a very rare time. My counsel, Don Dinan.

My company is a legitimate small business with less than 40 workers, and it's typical of many small businesses in the foundry and casting industry. Municipal Castings Fair Trade Council is an organization of 73 foundries in 21 States, almost all of whom are small businesses.

We are an industry that is greatly impacted by imports and which very much needs relief. Our products are largely sold to State and local governments, and consists of such basic products as water and gas meter boxes, manhole covers, lamp posts, police and fire call boxes. We have submitted a nine-page statement for the record outlining a detail of our problems and comments on the two bills before this committee, as well as other areas we believe we should address.

Therefore, it is not my intention in this short time I have for an oral presentation to read the entire statement. Rather, I hope to highlight a few major points in the statement, as well as stress several points that are not in the statement, and reflect my ideas solely. On behalf of Pinkerton Foundry, they are not necessarily on behalf of the entire Municipal Castings Fair Trade Council.

Briefly, let me say I strongly support the two bills you are considering—S. 50 and S. 1672. I particularly support the provisions of the bill to provide funds for small businesses to bring trade actions. Right now, access to trade laws is a privilege of the rich, of big business and big labor. Small companies like myself can barely afford the cost of filing one of these cases, much less following the lengthy hearings and appeals.

I know this firsthand, since my firm was the company that filed the complaint in the countervailing duty against castings of India. This case was a perfect example of how long and costly proceedings of a domestic industry winds up with nothing. Although the Commerce Department originally imposed a 21.75 tariff on Indian imports, this was whittled away to about 3 percent in the first administrative review. This cheap Indian casting selling at $0.14 a pound are still threatening to put our industry out of business.

The Peoples Republic of China are selling castings at $0.18 a pound, FOB San Francisco. Small foundries like mine have numerous potential dumping and countervailing actions that we could bring, and which are justified, but we are simply too small to afford these cases. Thus, we very much need the provisions of Senate bill 50 that would provide up to 100 percent of the first $50,000 in fees and 50 percent of the next $50,000. Also, the proposed fast track cases that skip the preliminary determination would help keep the cost of these cases within reason.

Our industry has had considerable problems with imported castings that are not properly marked to show the country of origin. We think the customers, the city, the unemployed steelworkers have the right to know where these castings are made. Right now, customs allows these products into our country where they can hide the markings.

We now have another problem that Senator Boren and others have attempted to solve in Senate 1808, which contains a country of origin marking requirement for products. And this is now part of H.R. 3398 to come to the Senate floor. However, the Senate continues delays in bringing the bill, and we in the foundry industry wonder why.

All the foundries like mine make imported products such as manhole covers and lamp posts—foundries like ours that are the only source of any basic military weapons. If there were a war today, the U.S. foundries would no longer be able to adopt and adapt and make and manufacture the machines of war. In fact, there is no company today that can produce turrets for tanks. They are now imported from Germany. And I have a question: Would these tanks be available if war broke out?

Since your committee also has jurisdiction over taxes, I would point out that many of these taxes in the social benefits programs, so-called mandated costs, are making us uncompetitive with imports. Total mandated costs such as Social Security contributions of employers and employees, workmen's compensation insurance, unemployment insurance, environmental costs, equal 33.7 cents per dollar of wages. The Indians do not have these costs. The Federal Government must do something to relieve small business of these burdens that make them anticompetitive or take actions against imports that can sell at unrealistic low prices because they do not have these social costs.

Our trade deficit is staggering. Every billion dollars in trade deficit is 50,000 lost jobs. Small business creates 85 percent of the jobs in this country, and we need your help.

Mr. Chairman, if I could give a side light to what Mr. Easton said with the ITC and that group. I was one of those crazy people who filed a suit with the ITC and the Commerce Department. I did it without an attorney. But we filled out 121 pages, 121 copies, sent it to the Commerce Department, sent it to the International Trade Commission by the U.S. Post Office and by some fluke it got to the Commerce Department one day, the International Trade Commission the next day, so they refused to accept them. So I had to run another million pages of paper—I should have bought stock in a paper company, I guess—and I had to fly back here with them in my hand. I wouldn't allow the United Airlines to put them in the cargo hold.

I filed them with them the same day, within an hour of each other. They accepted them. I won the hearing. I went to the first hearing. I saw the battery of attorneys that India brought in. I was even more scared then than I am now.

And what I am telling you, sir, is small business is intimidated by Washington, DC, by the bureaucracy and by the amount of paper we have to do to take care of you. And we are the government and you are supposed to help us. The people that were sitting here first ignore us. They live within their 17 square concrete circle and live in another world. We can't get through to them. We have got to change that, sir. These bills will do it.

Thank you.

Senator **Danforth**. Mr. Pinkerton, if you were nervous, we will have to have you back some time when you are really on your form. [Laughter.]

Senator **Mitchell**. I just might ask Mr. Pinkerton this. If you got through all that proceeding without an attorney, why do you need Mr. Dinan here today? [Laughter.]

Mr. **Pinkerton**. Sir, he holds my hand. I would have really told you a story if they hadn't have rewritten my statement. [Laughter.]

[The prepared statement of Mr. Pinkerton follows:]

THE MUNICIPAL CASTINGS FAIR TRADE COUNCIL (MCFTC) AND PINKERTON FOUNDRY, LODI, CALIFORNIA

Mr. Chairman and members of the Senate Finance Committee, my name is Jim Pinkerton, President of Pinkerton Foundry in Lodi, California. We are a small business with 36 employees. This is down from a high of 65 before imports began. I am appearing today both on behalf of my own foundry and on behalf of the Municipal Castings Fair Trade Council (MCFTC), an organization of 73 foundries in 23 states, over 90% of which are small businesses, which are involved in producing castings largely for consumption by state and local governments. These include such products as manhole covers, water and meter boxes, covers for gas and oil depositories and related materials made from iron. However, our members make other types of construction castings, such as pipes, valves and other items made from cast iron used by the construction industry. Almost all of our members are small businesses, at least under the definition of the Small Business Administration insofar as they have less than 500 employees. Our members tend to be small, very often family-owned businesses, that have been operating for many years. Increasingly, we have been finding survival more and more difficult due to import penetration of the U.S. market. We therefore feel our organization has a great deal of knowledge and input concerning the topic of the hearings today concerning "problems of access by small business to trade remedies." We compliment Senator Danforth, Chairman of the Subcommittee on International Trade, for calling these hearings because we believe that no topic could be more important right now to the economy of the U.S. in enabling small business to be able to continue to survive and compete in the United States. We intend to address ourselves to the two bills that are being considered, S. 50 and S. 1672, but also to discuss in general some of the problems that the foundry industry faces and some of the areas in which we feel remedial legislation is desirable. The foundry industry has been involved in a number of cases under the Countervailing Duty law, and therefore is familiar with its administration and some of the difficulties in small businesses bringing cases under this law. We have also been involved in other trade investigations, and we therefore have certain relevant experience that we believe we can share with members of this Committee.

COMMENTS ON S.50

We support and urge your passage of S.50, entitled "The Small Business and Agricultural Trade Revenues Act of 1983." This bill is designed to make trade relief more accessible to small businesses, and we believe that it is very much needed. Section 3 of the bill would create in the Commerce Department an Office of Small Business Trade Assistance. Part of the purpose of this office would be to administer a small business trade access trust fund which would be financed by a percentage of Customs receipts and used to assist small industries in preparing for proceedings under our trade laws. We understand that reimbursement would be provided to small businesses for their expenses in bringing trade actions, up to a maximum of 100% of the first $50,000 and 50% of the next $50,000. We believe that this provisions is much needed, since many firms that are the size of ours just do not have the money to finance the cost of trade actions today. Such actions have become increasingly long and difficult as a result of changes in the trade laws. We believe that providing funds to small business for their expenses in these proceedings will enable equal access to the trade laws for all companies and not just the large, corporate giants.

Although we realize that this involves an expenditure of government funds at a time of a tightening budget, the linking of these expenditures to customs revenues could make this a self-paying program. For example, the more trade cases that are brought by small business, the more dumping duties, countervailing duties and other forms of tariff penalties will be imposed, which will result in more revenues. Therefore, we believe that such a program could pay for itself, and even result in a net income of revenues to the United States. Since the bill provides that no expenses will be awarded for frivolous actions, it assures that only serious trade cases will be brought under this law. Section 4 of the bill would liberalize the standard for proving injury to give the International Trade Commission more flexibility. Section 5 of the bill would eliminate one step in judicial review of trade cases, which would lower the cost for small businesses in cases that are appealed. Section 6 would provide a more flexible standard for the Commission in determining material injury, particularly when small businesses are involved. Often small businesses like ourselves are not able to accumulate the type of economic data that is used in these cases, since we cannot afford expensive economists or detailed studies of various markets. This section would require the ITC to consider the circumstances of the small business petitioner, and the availability of information to it in determining whether it has met its burden of proving material injury. We believe this increased flexibility would allow the ITC to find material injury in certain cases where it might otherwise be required to find no injury.

Section 7 of the bill would provide that, in making decisions under Section 202 of the 1974 Trade Act, the President shall give more consideration to economic conditions in geographical areas in which small business is located and the abilities of small businesses to adjust. This would add new standards t those already existing that would particularly benefit small businesses. This could mean that relief could be granted in cases where small businesses are impacted in a certain limited geographical area but which might not otherwise meet the test for injury.

Since the foundry industry is a manufacturing industry, we are not concerned with the provisions of the bill that deal with agricultural products, and therefore we will not comment on them. However, we do feel that in general the provisions of the bill discussed above all would be beneficial to small businesses and should be enacted.

COMMENTS ON S. 1672

S.1672 is entitled "The Unfair Trade Remedies Simplification Act". The purpose of this bill is to give small companies greater ability to bring cases under the Antidumping and Countervailing Duty Law. This would be done by expediting procedures under these laws and provide quicker and less costly relief. This would be done by an optional "fast track" proceeding which would shorten the time periods in investigations. The bill would also create an Office of Small Business Advocate in the Commerce Department, but unlike S.50, does not provide funds for financing trade cases. We believe that this is a major deficiency in S.1672, which makes it less desirable than S.50, and we would urge that the provisions of S.50 be adopted relating to provision of funds to small businesses or that a similar provisions be offered as an amendment to S.1672.

GENERAL COMMENTS

Many problems that small businesses have are not only related to administration of the Antidumping and Countervailing Duty laws but also to the Customs laws. Our foundry members have had a great deal of problems, Customs enforce existing laws on marking requirements. We believe that Customs marking requirements are a legitimate function of the U.S. laws to enable purchasers to know that products are of foreign origin. In the case of certain products produced by our members, particularly manhole covers, Customs has been allowing these products to enter the U.S. marked either on the side or bottom, or in a way that can be covered up after the manhole cover ring is placed in a concrete fitting. Provisions to remedy this were contained in S.1808, introduced by Senators Mattingly and Boran, which is now a part of H.R. 3398. Our experience in dealing with Customs in this matter has indicated to us that Customs is sometimes unable to be responsive to the needs of small businesses. We would, therefore, like to see an office of Small Business Assistance, or a Small Business Advocate set up in the U.S. Customs Service. This office should have independent powers to enable small businesses to cut through red tape and to immediately direct them to the proper Customs officials and to set up appointments, obtain information and generally end bureaucratic runaround that sometimes is received by small businesses in trying to deal with Customs matters.

In addition, we would suggest provisions providing for a simplified and expedited review of domestic industry requests challenging Customs' interpretations dealing with marking, rather than having to go to court. Perhaps a special marking review board could be set up in the Treasury Department that would allow immediate review of adverse Customs decisions relating to marking without the delays and expenses of going to the Court of International Trade.

We also suggest that small business advisory committees be set within Customs, Commerce Department and the ITC to allow small business members to regularly meet with officials of these agencies to advise them of their problems and to simplify red tape and procedures.

In addition, we would suggest a major study and revision of U.S. laws dealing with adjustment assistance to allow meaningful and concrete aid specifically directed toward small businesses that are impacted by foreign competition. We do not believe such adjustment assistance should be limited to a remedy in trade cases, or tied to the different tests now required in Section 251 of the Trade Act of 1974.

For example, if an industry or a group of companies is able to substantiate to the U.S. government that it is impacted by foreign competition, funds should be made available for retooling, retraining, relocation, research and development, without the necessity of going to the International Trade Commission or the Commerce Department where formal hearings can be held. Since foreign companies are not adversely affected by any aid to small businesses, it is not necessary that any hearings or public investigation be made. We suggest that either the Small Business Administration or the Commerce Department be empowered to provide this aid to impacted small businesses directly without public hearings based on an application, an investigation of the need, and publicly available information on level of imports, pricing and other information but that it should not be necessary for small businesses to meet the three standards in Section 251(c) that now require an absolute decrease in sales or production. By the time this happens it is often too late. Sometimes simply a failure to grow is a sign of economic injury and lack of competitive ability. Also we believe it should not be necessary to show that imports "contributed importantly" to the decline. We think, at least for small business, the test should be more that imports are "a factor" in the decline. We believe this money should be made available in a short amount of time in a proceeding that takes no more than 90 days. Moreover, unlike past concepts of adjustment assistance which have often been referred to as "burial insurance", a U.S. company or industry should not have to wait until it is severely injured by imports to apply for this assistance. Such assistance should be provided as soon as there is a viable threat of import injury to enable the U.S. companies to retool or obtain the necessary machinery, etc., to be competitive before the foreign competition has reached the stage of destroying the U.S. industry.

In the short time allowed to us we cannot give concrete details or statutory language for each of these suggestions, but our counsel will be available to meet with Committee members and staff members and attend mark-up sessions and submit actual proposed language for all of the suggestions that we have outlined.

Thank you for your attention, and we appreciate the opportunity to participate in this hearing.

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STATEMENT OF ROBERT WOLCOTT, JERNBERG FORGING CO., CHICAGO, IL

Senator DANFORTH. Mr. Wolcott.

Mr. WOLCOTT. Good morning. This may be a tough act to follow. I'm Robert C. Wolcott, vice president of Jernberg Forging Co. of Chicago. And I am accompanied by Ilona Modly Hogan of Hogan & Hogan law firm. I appreciate the opportunity to be here this morning, and provide some views concerning the accessibility of trade laws to small businesses.

In practical terms, the Jernberg Forge Co. fits into much the same category of Mr. Pinkerton, except we are in the forging business. And we employ appoximately 200 people on the south side of Chicago.

Our principal product is hot ferrous forging for the basic industries of automotive, off the road equipment, farm implements, railroad equipment and ordnance.

Traditionally, import competition has come from the Japanese and we have been able to compete. However, recently we have gotten into the situation where we are unable to compete with Italian competition. Jernberg is recognized as one of the leaders in the industry of being a cost-efficient producer and using some of the latest technology that is available in the world. However, this doesn't ensure a chance of our survival when other countries have ready access to the markets in the United States without fair response to the trade laws.

It is our understanding that the Italian forging manufacturers receive subsidies to such an extent that they are in a position to sell to our customers on a consignment basis. This means that the customer is not necessarily required to pay for the forgings until after they have them in their possession and have used them.

As a result, the Italian producer finances the cost of our customers' inventory. An example of this was brought out in our recent petition to the ITC concerning the dumping of forged undercarriage components in the United States.

The Italian supplier provided export financing to the U.S. customer. Our costs are such that we just simply cannot meet these prices and finance terms and remain profitable. And yet if we do not compete, we are in a position where we lose the sale. And we must respect our customer's right to place his business where it is to his best interest.

In our particular case, our losses, as we showed in the case, amount to approximately $9 million and the number of jobs that were lost is between 45 and 50.

We are aware that the U.S. laws provide remedies for injurious subsidization. However, we lack the resources, like the other gentleman that testified, to further pursue the subsidy practices which exist.

We have combined our financial resources with five other forge shops in the United States in order to pursue the Italian case. We have expended more than $100,000 and have taken more than 10 months to pursue. We are now in an appeal phase. And the appeals phase, we are told, should expect to be about 12 months.

In summary, since I see that the time is getting short, first, we support both S. 1672 and also S. 50. There are, however, several changes that we would ask to be considered. They have been filed in our written statement.

Again, I thank you for the opportunity to present the views of one of the small business people in the United States. We are certainly more than happy and willing to participate in any way we can to help revise the legislation and give us ready access to the trade laws.

Thank you.

Senator **Danforth**. Thank you.

[The prepared statement of Mr. Wolcott follows:]

Metalworking
Fair Trade Coalition
C/O Forging Industry Association (Secretariat) / 55 Public Sq., Cleveland, Oh 44113 / 216/781-6260

Good morning. I am Robert C. Wolcott, Vice President of Jernberg Forgings Company, Chicago, Illinois. I am accompanied by Ilona Modly Hogan of Hogan & Hogan Law Firm. I appreciate the opportunity to appear before the Committee and provide some views concerning the accessibility of the trade laws to small businesses.

In practical terms, we consider Jernberg Forgings Co. to be a small business. Sales in the most recent fiscal year were $28.5 million and we employ 200 people. Our principal product is a hot ferrous forging for automotive, off road equipment, farm equipment, railroad equipment and ordnance customers. Traditionally, import competition has been from the Japanese but we have generally been able to compete. Recently, however, we have experienced new import competition, primarily from Italy, which could endanger our future.

It is our understanding that the Italian forging manufacturers receive subsidized export financing to such an extent that they are in a position to sell to our customers on a consignment basis. This means that the customer is not required to pay for the Italian forgings (which were already priced well below those we produced) until they are actually used. As a result, the Italian producer finances the customers' inventory costs. An example of this was brought out in our recent petition to the International Trade Administration of the Department of Commerce concerning dumping of forged undercarriage components in the United States. The Italian supplier provided export financing to the United States customer. Our costs are such that we simply cannot meet these price and financing terms and remain profitable. And yet if we do not compete, we lose sales since even our most loyal customers are bound by economic realities.

We are aware that the United States trade laws provide a remedy for injurious subsidization. However, we lack the resources, as a company, to further investigate the Italian subsidy practices which exist. We combined our financial resources with five other U.S. forgings companies to file an initial petition in April 1983, but found the process to be very expensive and time consuming. Net result, the ITC imposed a 1.375 percent ad valorem tax on forged undercarriage components versus the requested 40 percent. The remedy is inadequate, business has been lost and employment reduced in our facility. As a consequence, we are obviously very interested in any procedure that would facilitate recourse to those laws.

I should add that we are members of the Metalworking Fair Trade Coalition (MFTC) on whose behalf I am testifying this morning. Some MFTC members recently sought relief under existing trade laws on an industry-wide basis because, like

Jernberg Forgings, they could not afford to bring an action alone. But even these efforts to pool resources have been frustrated by certain inadequacies in the trade laws. To remedy these deficiencies, MFTC has joined the Trade Reform Action Coalition (TRAC). Both coalitions and my company generally endorse S. 1672 and S. 50, but recommend that certain changes be made.

First, we completely support the notion of streamlining and expediting countervailing duty and antidumping procedures. The optional procedure made available under §2 of S. 1672 is an excellent concept although we think it should be amended to permit provisional duties at some stage during the expedited proceeding. This could be accomplished, consistent with the Subsidies Code and Article VI of the General Agreement on Tariffs and Trade, by requiring ITA to make a preliminary finding solely on the pleadings at some early stage in the proceeding. Based on that preliminary finding, provisional duties could go into effect.

We also entirely support §3 of S. 1672 which would provide for the establishment of a small business advocate. The TRAC omnibus bill, which I will discuss later, has adopted this provision virtually intact. No case better illustrates the need for such an advocate within the Department of Commerce than the previously mentioned forgings case. We note that §3 of S. 50 would also establish a Small Business Trade Assistance Office within the Department of Commerce and would provide for payment of reasonable proceeding expenses. The TRAC bill also contains in §117 a reimbursement provision. Perhaps these differing provisions could be reexamined together with the review which is presently taking place with respect to extension of the 1980 Equal Access to Justice Act beyond its September 1984 expiration date.

We also support §4 of S. 1672 and a similar provision was adopted in the TRAC bill. Limiting the scope of the preliminary investigation at the International Trade Commission during the 45-day preliminary injury determination in regular proceedings (i.e., those not expedited at the option of the petitioner) would reduce costs. An alternative would be to eliminate the preliminary determination of injury altogether except in those cases where the ITA concludes there is no evidence at all of injury. A similar procedure was applied to certain countervailing duty cases prior to 1979 and was effective in weeding out frivolous petitions.

With respect to judicial review, I am advised by lawyers familiar with the administration of the 1979 Act, that the Court of International Trade has developed a proficiency in trade law and the interpretation of the 1979 Act which probably should not be eliminated by giving exclusive appellate jurisdiction to the Court of Appeals for the Federal Circuit. Moreover, they advise me there is a value to interlocutory review of decisions taken during the investigatory process.

Such review was particularly helpful following adoption of the 1979 Act when the Court was effective in implementing the congressional intent. Should the Committee nevertheless decide to curtail interlocutory appeals, we strongly recommend that they not be entirely eliminated and that consideration be given to making exceptions at the discretion of the court. This is true in civil litigation in the federal courts where interlocutory appeals are generally precluded but are allowed in exceptional circumstances. The chief reason put forth for elimination of interlocutory appeals is cost savings. This is an important goal in trade law reform which we support. However, cost savings should not be achieved at the expense of further injury to petitioners from dumped or subsidized imports allowed to continue to enter the U.S. market until a final determination is made. "Justice delayed is justice denied." Moreover, in view of the widespread availability of interlocutory appeals in other legal proceedings, there is no sound basis for denying parties in international trade actions similar rights.

Aside from these recommended changes, I emphasize that we appear before the Committee today in support of S. 1672 and S. 50 and the concept of enhancing accessibility to the trade laws. Let me also say that there is an urgent need for greater clarity and less discretion in the trade laws. While the 1979 Trade Act was a significant step toward providing meaningful relief from unfair or injurious imports, numerous flaws and problems have been unveiled in the decisions of the ITC and ITA. These perceived difficulties with the current law led to the formation of a coalition of industries and labor organizations known as the Trade Reform Action Coalition whose membership now accounts for between $250 and 300 billion in annual sales volume and some 4.5 million workers (a list of member organizations is attached). TRAC has developed a comprehensive trade law reform proposal which has been introduced in the House as H.R. 4124 and now has 50 cosponsors and in the Senate as S. 2139 by Senators Heinz, Mitchell, Moynihan and Hollings. While this is not the forum to discuss the provisions of that bill except as they relate to the subject of this hearing, we do hope that at the appropriate time those provisions will be given careful and affirmative consideration. Suffice it to say that these companion bills contain four titles amending the antidumping and countervailing duty laws, Section 201 escape clause, Section 301, and the Revenue Act of 1916.

The single provision of H.R. 4124/S. 2139 of most importance to the metalworking industries is Section 127 - closing the downstream dumping loophole.

"Downstream Dumping" is defined as "imports of a product which is produced with materials purchased at subsidized, preferential, or below-cost prices". Section 127 would amend present law by closing the loophole that allows foreign producers of raw materials to circumvent U.S. trade laws by selling to exporters in that country (or third countries) at preferential or below cost rates, resulting in the export of end products to the U.S. with an unfair cost advantage. The definition of constructed value would be changed to include the full value of costs, rather than the purchase price paid by the importer. We strongly commend your attention to this provision as it particularly impacts small metalworking businesses.

This is but one of 60 reform proposals endorsed by the Trade Reform Action Coalition. We would be pleased to submit with this testimony a section-by-section analysis of H.R. 4124/S. 2139 for the record and work with the Subcommittee staff to determine which of these TRAC proposals significantly impact small businesses.

We are gratified that some of our concerns have been recognized in S. 1672 and S. 50 and are most appreciative of this opportunity to present our views.

Thank you.

MEMBERS OF
THE TRADE REFORM ACTION COALITION (TRAC)

An alliance of U.S. companies, trade associations, unions and workers in the chemicals, color televisions, fiber/textile/apparel, footwear, leather goods, metalworking, nonferrous metals, and steel industries.

American Fiber, Textile, Apparel Coalition (AFTAC)

AFTAC is a coalition of 18 trade associations and two labor unions representing the fiber/textile/apparel complex of the United States. It evolved for the purpose of representing these industries in issues of international trade.

The coalition is representative of an industry with facilities in 50 states, with employment totaling 2.4 million and sales accounting for $105 billion.

AFTAC members:
- Amalgamated Clothing & Textile Workers Union
- American Apparel Manufacturers Association
- American Textile Manufacturers Institute
- American Yarn Spinners Association
- Carpet & Rug Institute
- Clothing Manufacturers Association of America
- International Ladies' Garment Workers' Union
- Knitted Textile Association
- Luggage & Leather Goods Manufacturers of America
- Man-Made Fiber Producers Association, Inc.
- National Association of Hosiery Manufacturers
- National Association of Uniform Manufacturers
- National Cotton Council of America
- National Knitwear Manufacturers Association
- National Knitwear & Sportswear Association
- National Wool Growers Association
- Neckwear Association of America
- Northern Textile Association
- Textile Distributors Association, Inc.
- Work Glove Manufacturers Association

(more)

American Iron and Steel Institute (AISI)

AISI is the principal trade association representing the United States steel industry. Its 61 domestic member companies produce 87 percent of the raw steel in the United States at facilities in 39 states.

In 1982, total sales were $52.3 billion and employment was 446,000.

Committee to Preserve American Color Television (COMPACT)

COMPACT is an unincorporated association comprised of three manufacturers and 11 labor organizations which represents the overwhelming majority of production and workers in the domestic color television industry.

COMPACT members employ approximately 18,000 people in 18 states and account for total sales of $4.5 billion.

COMPACT members:
- Allied Industrial Workers of America, International Union
- American Flint Glass Workers Union of North America
- Communications Workers of America
- Corning Glass Works
- Glass Bottle Blowers' Association of the Unites States and Canada
- Independent Radionic Workers of America
- Industrial Union Department, AFL-CIO
- International Association of Machinists
- International Brotherhood of Electrical Workers
- International Union of Electrical, Radio & Machine Workers
- Owens-Illinois, Inc.
- United Furniture Workers of America
- United Steel Workers of America
- Wells-Gardner Electronics Corp.

(more)

Group of 33 (Ad Hoc Labor Industry Trade Coalition)

The Group of 33 is an ad hoc labor-industry trade coalition formed in 1978 to advocate changes in import trade remedy laws, with particular focus on the Multilateral Trade Negotiations, subsidies code and 1979 Trade Agreement Act.

The 28 industry trade associations and five labor unions that make up the Group of 33 represent a wide diversity of industries which include footwear, leather products, chemicals, lead and zinc, textile machinery, industrial equipment, various textile and apparel products, and agricultural products.

Group of 33 members:

Amalgamated Clothing & Textile Workers Union, AFL-CIO
American Apparel Manufacturers Association
American Federation of Fishermen
American Mushroom Institute
American Pipe Fittings Association
American Textile Machinery Association
American Textile Manufacturers Institute
American Yarn Spinners Association
Association of Synthetic Yarn Manufacturers
Bicycle Manufacturers Association of America, Inc.
Cast Iron Soil Pipe Institute
Clothing Manufacturers Association
Copper and Brass Fabricators Council, Inc.
Footwear Industries of America, Inc.
Industrial Union Department, AFL-CIO
International Ladies' Garment Workers' Union, AFL-CIO
International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO
Lead-Zinc Producers Committee
Luggage & Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association
National Association of Chain Manufacturers
National Association of Hosiery Manufacturers
National Cotton Council
National Handbag Association
National Knitwear & Sportswear Association
National Knitwear Manufacturers Association
Northern Textile Association
Scale Manufacturers Association, Inc.
Synthetic Organic Chemical Manufacturers Association
Textile Distributors Association
United Food and Commercial Workers International Union, AFL-CIO
Valve Manufacturers Association
Work Glove Manufacturers Association

(more)

Metalworking Fair Trade Coalition (MFTC)

The MFTC is a coalition of 27 trade associations representing the U.S. metal parts industries that joined together in 1982 to seek government cooperation and action to assure fair trade between the United States and its world trading partners.

MFTC members have operations in 43 states with employment totaling 1.4 million and sales of $75 billion.

MFTC members:
- Alliance of Metalworking Industries
- American Cutlery Manufacturers Association
- American Pipe Fittings Association
- American Metal Stamping Association (Washer Div.)
- American Die Casting Institute
- American Wire Producers Association
- Association of Die Shops International
- Cast Metals Federation
- Cutting Tool Manufacturers Association
- Expanded Metal Manufacturers Association
- Forging Industry Association
- Hand Tools Institute
- Industrial Fasteners Institute
- Industrial Perforators Association, Inc.
- Iron Castings Society
- Metal Treating Institute
- National Screw Machine Products Association
- National Tooling and Machining Association
- National Foundry Association
- National Association of Chain Manufacturers
- Non-Ferrous Founders' Society
- Steel Founders' Society
- Steel Plate Fabricators Association Inc.
- Tool & Die Institute
- U. S. Fastener Manufacturing Group
- Valve Manufacturers Association
- Welded Steel Tube Institute

Steel Service Center Institute (SSCI)

SSCI is a trade association representing almost 500 North American companies in the steel industry, with 900 service centers in industrial areas. Service centers are divided into three types: industrial steel service centers, merchant products distributors and oil country jobbers. Approximately 124 steel producers are associate members.

With total sales of $20-22 billion, SSCI members employ 120,000 people in 49 states.

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MAJOR INDUSTRIES REPRESENTED IN TRAC

(1982 Data)

Industry	Value of Shipments (billion $)	Employm nt	No. of States
Chemicals[1]	N/A	N/A	50
Color TVs	4.5	18,00	18[E]
Fiber/Textiles/Apparel	105.0	2,355,00	50
Footwear, Nonrubber	4.2	130,00	38
Leather Products[2]	2.0[E]	50,00 [E]	40[E]
Metalworking	75.0	1,400,00	43
Nonferrous Metals[3]	1.2	5,60	16
Steel Production[4]	52.3[4]	446,00 [4]	39[4]
Steel Distribution	22.0[E]	120,00	49

N/A Not applicable.

[E] Estimate

[1] Synthetic organic chemicals.

[2] Handbags, luggage, personal leather goods, leathe apparel, certain work gloves.

[3] Lead and zinc.

[4] Based on a survey of American Iron and Steel Inst tute companies accounting for 82 percent of raw steel pro uction; the figures represent total steel and non-steel sales and employment.

STATEMENT OF DR. KENNETH R. BUTTON, ASSISTANT TO THE PRESIDENT, ECONOMIC CONSULTING SERVICE, INC., WASHINGTON, DC

Senator DANFORTH. Dr. Button.

Dr. BUTTON. Thank you, Mr. Chairman. I'm Dr. Kenneth R. Button, assistant to the president of Economic Consulting Services [ECS] in Washington, DC.

I'm testifying on behalf of Stanley Nehmer, president of ECS, who is unable to testify in person because he is participating at this hour in a trade relief proceeding on behalf of small business before the International Trade Commission.

ECS is a private firm with extensive experience in assisting U.S. companies and labor unions in seeking relief under U.S. trade laws. There is a great need for the type of assistance to small businesses in the trade area which is provided by S. 50, sponsored by Senators Cohen and Mitchell, and S. 1672, sponsored by Senators Mitchell and Chafee.

These Senators should be commended for taking the lead in addressing the serious and growing problems facing small businesses seeking relief from unfair trade practices and from injurious imports in general. We particularly endorse the establishment of both a small business trade assistance office within the Department of Commerce, and a trust fund to help defray the costs borne by small business when they bring an action under the trade remedy statutes.

Bringing a case under U.S. trade remedies laws is extraordinarily and unnecessarily complex, time consuming and financially burdensome, particularly, for small businesses. Also, legal counsel and the services of economic consultants for data collection and analysis are for the most part necessary if a case is to be effectively presented and won.

However, the combined cost of legal and consulting fees are beyond the means of many industries. These problems are partially addressed in S. 50 and 1672. A broader problem which continues to concern U.S. companies, labor unions and agriculture is their inability to secure adequate redress under the trade laws as Congress had intended.

A recent case in point resolves around the Commerce Department's suspension agreements with Brazil on certain carbon steel products. The proposals of the Trade Reform Action Coalition embodied in S. 2139 address the key trade relief problems. We are pleased that Senators Mitchell, Moynihan, and Heinz are original cosponsors of that bill, and that Senator Cohen has now become a cosponsor as well.

We hope that the subcommittee will soon be able to consider trade law revisions in a comprehensive approach as outlined in S. 2139. It is clear, however, that the steps presented in S. 50 and S. 1672 to assist small business are necessary and important contributions to maintaining an open trading system and fair treatment for U.S. small business.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, sir.

[The prepared statement of Dr. Button and Mr. Stanley Nehmer follows:]

ECONOMIC CONSULTING SERVICES INC.

STATEMENT OF

STANLEY NEHMER, PRESIDENT
ECONOMIC CONSULTING SERVICES INC.
WASHINGTON, D.C.

CONCERNING

PROBLEMS OF ACCESS BY SMALL BUSINESSES TO TRADE REMEDIES

BEFORE THE

INTERNATIONAL TRADE SUBCOMMITTEE
OF THE
SENATE FINANCE COMMITTEE

April 6, 1984

1320 NINETEENTH STREET, N. W., WASHINGTON, D. C. 20036 (202) 466-7720

SUMMARY

I am Stanley Nehmer, President of Economic Consulting Services Inc., Washington, D.C., which is a private firm with extensive experience in assisting U.S. companies and labor unions in seeking relief under U.S. trade laws. There is a great need for the type of assistance to small businesses in the trade area which is outlined in S. 50 and S. 1672. I particularly endorse the establishment both of a small business trade assistance office within the Commerce Department and of a trust fund to help defray the costs borne by small businesses when they bring an action under the trade remedy statutes.

Bringing a case under U.S. trade remedy laws is extraordinarily (and unnecessarily) complex, time-consuming and financially burdensome, particularly for small business. Moreover, there is very little certainty that the case ultimately will be resolved on its merits. These problems are partially addressed in S. 50 and S. 1672.

A broader problem which continues to concern U.S. companies, labor unions, and agriculture is the inability of our system to work to secure adequate redress under our trade laws as Congress intended. A recent case in point revolves around the Commerce Department's suspension agreements with Brazil on certain carbon steel products. The Trade Reform Action Coalition proposals embodied in S. 2139 address the key trade relief problems. I hope the Subcommittee will soon be able to consider trade law revision in the comprehensive approach outlined in S. 2139. Today's hearings offer a good first step in that direction.

I am Stanley Nehmer, President of Economic Consulting Services Inc., Washington, D.C. ECS is a private firm which specializes in international economics. Since the formation of ECS eleven years ago, it has been the economic consultant in over 60 countervailing duty and anti-dumping cases and numerous Section 201 "escape clause" cases, including 7 of the only 11 cases to have received import relief to date after receiving affirmative ITC injury findings. The firm is economic consultant in four of the five 201 cases pending before the ITC. We have also had experience with Section 301 and 337 cases involving unfair trade practices.

Our clients are primarily domestic industries and labor unions. Many of the industries for which we are consultants are small businesses. As such, we can speak with first hand experience about the great need for the type of assistance to small businesses in the trade area which is outlined in Senator Cohen's and Senator Mitchell's bill, S. 50. Specifically, S. 50 would establish a small business trade assistance office within the Commerce Department and a trust fund to help defray the enormous costs borne by small businesses when they bring an action under the trade remedy statutes. We can also speak to the need for the types of reforms outlined in Senator Mitchell's and Senator Chafee's bill, S. 1672, which would greatly assist small businesses access to the trade relief statutes. These Senators should be commended for taking the lead in addressing the serious and growing problems for small businesses seeking relief from foreign unfair trade practices or from otherwise injurious imports.

The President has made clear his appreciation of the contribution which small business makes to America. The President recently stated:

> Small business plays a vital role in American life.... They make everything from ice cream to shoes to computers. Small businesses are the biggest providers of new jobs, give the most employees the freedom to work part time, hire the most women, young people and senior citizens. They embody innovation, provide economic diversity and chart our path toward the products, markets and jobs of the future.

When imports threaten U.S. small buinesses, they threaten the foundation of the American economy.

Bringing a case under U.S. trade remedy laws is extraordinarily (and unnecessarily) complex, time-consuming and financially burdensome, particularly for small business. Moreover, there is very little certainty that the case ultimately will be resolved on its merits. Legal counsel and the services of an economic consultant are for the most part necessary if a case is to be won. However, the combined costs of legal and consulting fees are beyond the means of many industries. In fact, ECS has, on occasion, brought and won trade actions on behalf of small businesses or industries without legal counsel. Even without the legal fees, the costs can be onerous due in large part to the complexity of the proceedings.

In addition to the legal and consulting fees, there is also the issue of the cost in terms of time. Management in a small business is generally thin at the top. The chief executive is often the production manager as well as the sales manager. He or she simply cannot afford the time for repeated trips to Washington, D.C. for the necessary consultations with Government agencies and bureaus. Because of these difficulties, many cases are not brought by small businesses which consequently continue to suffer injury from imports without relief. The ultimate result can often be the demise of the firm.

It is easy to understand how small businesses can become quickly overwhelmed by the seemingly unending procedural and informational requirements of trade-related cases and the need to document foreign unfair trade practices that are both complicated and numerous. Equally burdensome are the attendant costs associated with these activities. S. 50 would lessen the amount of data required on the part of small businesses in their efforts to document such actions, and this in-and-of-itself would be a huge burden lifted off the shoulders of small businesses. But given the current requirements, it is easy to understand the widespread disillusionment with our trade remedy laws that exists in the small business community today.

In too many cases, the requirements necessary to bring a trade-related action are far beyond the abilities of most small businesses and, very often, their trade associations.

In short, there is no avenue by which these small businesses can redress foreign unfair trade practices, practices which can be destroying their markets and their businesses.

Domestic companies, labor unions, and even American agriculture are increasingly concerned about the inability of our system to work to secure adequate redress under our trade laws. These concerns are magnified when applied to America's small businesses which are more vulnerable than large firms to injury caused by imports. There are political pressures building in the United States because of the failure of our trade remedy laws to work as Congress intended. Many who have tested the system have found it wanting. They find themselves buried under difficult burdens of proof. They find the responsible executive agencies failing to pursue effective verification and investigatory procedures or to self-initiate cases despite a growing body of information on foreign trade practices available to the Executive Branch. Worst of all, they find the absence of will to enforce the statutes as Congress wrote them.

A case in point is the announcement by the Commerce Department on March 28, 1984, that it is belatedly terminating the suspension agreements with Brazil on certain carbon steel products because the government of Brazil failed to collect the export taxes intended to offset the subsidies found earlier by Commerce that were the basis of the suspension agreements. Commerce found that Brazil was up to 5 months late in collecting these taxes which Commerce had already agreed did not have to be paid until 45 days after the end of the month in which the export took place. When the back taxes were finally paid they were not subjected to any "monetary correction, interest, or other penalties." Even based on what Commerce was willing to accept there could have been a delay of as much as 75 days in the collection of the export tax. Considering the continuous devaluation of the cruzeiro, even timely payments left Brazilian exporters with a net export subsidy.

It took the Commerce Department several months to discover what the Brazilians were up to and to take action by terminating the suspension agreements. Meanwhile Brazilian steel exporters continued to enjoy subsidies on their shipments to the U.S.

Right now, while this Subcommittee is meeting, there is a hearing being conducted by the International Trade Commission on whether to revoke the outstanding countervailing duty on Brazilian cotton yarn. U.S. sales yarn producers are essentially small, family-owned businesses. If the ITC finds that there would be no likelihood of injury or threat of injury to domestic producers if the countervailing duty were revoked, Brazil will be free to export cotton yarn to the U.S. with a subsidy of 21.5 percent. Eleven percent of that subsidy is an export tax which probably has not been collected in a timely fashion, as in the case of steel, and which Brazil will legally no longer have to collect if the ITC rules in favor of Brazil.

The lack of enforcement is particularly disturbing in light of the fact that while the United States has been working for a more open world trading system, other countries have been maintaining or adding to myriad devices which distort [illegible]de and investment flows. There are subsidy practices too numerous to count, and there are also a host of governmental devices to promote a national industry at the expense of its foreign competitors -- a practice commonly referred to as "industrial targeting".

Many of the provisions of S. 50 and S. 1672, if enacted, would restore some credibility to our trade remedy laws. I would recommend, however, that the language of Section 3 (a)(3)(D) of S. 50, which refers to "expenses for data collection," be revised to read "expenses for data collection and analysis." Data collection per se is not sufficient without analysis of the data. Furthermore, we believe that the legislation should make it clear that fees for attorneys and for data collection and analysis include presentation of such data and analysis to the government entities dealing with cases which may be brought.

Many steps need to be taken to reform the trade remedy laws, such as those which have been recommended by the Trade Reform Action Coalition and which are embodied in S. 2139. We are pleased to note that Senators Mitchell, Moynihan, and Heinz are original co-sponsors of S. 2139.

The need for comprehensive reform of our trade remedy laws is underscored by the massive merchandise trade deficit being experienced by the United States. From a deficit of $42 billion in 1982, the deficit rose to $69 billion in 1983, and is now forecast to rise to $110 billion in 1984. The January and February 1984 trade deficits were at an annual rate of $120 billion.

Attached to my statement is a summary of the provisions of S. 2139. It is important to note that this bill goes beyond reform of the unfair trade statutes. It also deals with long-needed reform of the "escape clause" provisions of Section 201, as well as of Section 301 of the 1974 Trade Act. S. 2139 hopefully will be the subject of another hearing before this subcommittee in the not-too-distant future.

I appreciate the opportunity to appear and commend the sponsors of S. 50 and S. 1672 for their initiative in providing much needed help to small businesses in America.

U.S. TRADE REMEDY LAWS NEED TO BE CHANGED

The Trade Reform Action Coalition (TRAC) is a single-issue alliance (trade law reform) of industries which includes U.S. companies and unions in the chemicals, footwear, leather goods, metalworking, non-ferrous metals, steel, television, and fiber/textile/apparel industries. TRAC-related companies have annual sales in excess of $270 billion and employ more than 4½ million workers.

TRAC strongly supports H.R. 4124 and S. 2139, the "Comprehensive Trade Law Reform Act of 1983." This legislation is a bipartisan effort to provide comprehensive reform of U.S. trade remedy laws. It represents a realistic effort to restore more equitable competitive conditions in the U.S. market. H.R. 4124 and S. 2139 seek necessary changes in the trade remedy laws governing *dumping* in the U.S. market by foreign companies; countervailing duties to offset foreign government *subsidization* of exports to the U.S.; the "*escape clause*" mechanism to provide temporary relief to U.S. industries injured by increasing imports; responses to *unfair trade practices* which burden or restrict U.S. commerce; and *private remedies* in dumping cases under the Revenue Act of 1916.

The Trade Act of 1974 and the Trade Agreements Act of 1979 greatly improved our trade remedy laws, but since the passage of the 1979 Act, which incorporated the results of the Tokyo Round of "Multilateral Trade Negotiations", domestic industries have witnessed an increasing resort to unfair trade practices and predatory "targeting" of the U.S. market by foreign producers and their governments. Increasingly, it has become clear to both "basic" and "high technology" industries alike that existing U.S. trade remedy laws are inadequate, particularly when viewed against the backdrop of record trade deficits -- $48 billion in 1982, and expected trade deficits of $70 billion and $100 billion for 1983 and 1984, respectively. Loopholes and deficiencies in the present laws governing international trade have not created these deficits and accompanying unemployment, but they have made them worse.

TRAC believes strongly that our trade laws can and must be made to work. To accomplish this we need to make the petition process and the granting of relief under our trade remedy laws less complex, less expensive, and less arbitrary, yet more expeditious, more certain, more fair, and more effective for all petitioners. H.R. 4124 and S. 2139 achieve these goals by amending our trade laws in the following ways:

TITLE I: REFORM OF COUNTERVAILING AND ANTIDUMPING DUTIES

Currently, the filing of cases under our Antidumping (AD) and Countervailing Duty (CVD) statutes is too expensive, and it takes far too long for petitioners to obtain relief. In addition, the degree of administrative discretion which currently exists all too often reduces or nearly eliminates the level and effectiveness of the relief provided.

Section 102: Modifies current law to provide for earlier provisional remedies, where warranted, to prevent increased injury to domestic producers.

Section 103: Places burden of proof in trade cases on party that possesses the information necessary to prove or disprove allegations at issue.

Section 104: Establishes a "Small Business International Trade Advocate" office in the Department of Commerce to assist small business in proceedings related to the administration of U.S. trade laws.

Section 106: Requires the ITC to cumulate the impact of imports received simultaneously in the U.S. market (from different countries) for purposes of determining material injury.

Sections 107-109: Clarifies injury standards and places greater emphasis on threat of injury.

Sections 110-115: Modifies preliminary injury requirements to reduce costs to all parties. Also reduces Department of Commerce discretion to extend deadlines (without good cause); to suspend investigations without petitioner's consent; to reduce AD or CVD duties; and to revoke outstanding orders.

Section 116: Broadens/clarifies definition regarding who may initiate/participate in AD and CVD proceedings.

Section 117: Provides for reimbursement of costs to successful petitioners (out of AD and CVD revenues).

Sections 121-122: Because of repeated failure to properly offset foreign domestic subsidies via use of the export tax, H.R. 4124 and S. 2139 eliminate the export tax as a basis for suspending a CVD investigation. Also eliminates the export tax from the "offset list."

Section 123: Broadens the definition of "subsidy" by clarifying that subsidies that are "generally available" may be subject to countervailing duties if they are explicitly provided to a specific industry or group of industries; or provided directly or indirectly to a supplier of any input.

Section 124: Requires firmer commitments from a country to remove and reduce its subsidies in exchange for "country under the Agreement status", i.e. receiving the injury test in CVD cases.

Section 126: Clarifies application of CVD statute to targeting practices.

Section 127: Closes the "downstream dumping" loophole that allows foreign producers of raw materials to circumvent U.S. trade laws by selling to exporters in that country at preferential or below cost rates, resulting in the export of end products to the U.S. with an unfair cost advantage.

Section 128: Extends DOC's authority to suspend investigations based on quantitative restriction agreements with foreign governments to antidumping investigations (presently only in CVD).

Section 129-134: Provides statutory direction with regard to miscellaneous unsettled issues in the administration of the antidumping statute.

Section 135: Provides U.S. enforcement authority for negotiated settlements based on withdrawal of petitions.

TITLE II: REFORM OF ESCAPE CLAUSE PROCEDURES

The record of the "escape clause" in providing American industry with effective import relief has been dismal. Out of 48 "escape clause" cases completed since the 1974 Trade Act, only 11 have resulted in import relief. Change in the "escape clause" procedures is essential in order to provide effective relief in cases involving fairly traded, yet injurious, imports.

Section 201: Conforms the injury causation test to GATT standards by using "cause" as in GATT instead of "substantial cause" as in present U.S. law. Producers of major materials, parts, components, and subassemblies (irrevocably destined for inclusion in a finished product under investigation) are given standing as an entity to file a petition. Provisional relief from import surges is provided under special circumstances during the investigatory phase.

Section 202: Adjustment assistance is removed as one of the remedies the President can provide for relief.

Section 203: If the President decides on no import relief, or relief different than that recommended by the ITC, or if he decides to negotiate orderly marketing agreements, he must seek "fast-track" Congressional approval. If Congress does not vote affirmatively, the President shall put the ITC's recommendations into effect. Import relief shall be for at least five years, not exceed ten years, and not be renewable. Orderly marketing agreements may be multilateral or bilateral.

TITLE III: REFORM OF PROCEDURES FOR ENFORCEMENT OF U.S. RIGHTS AGAINST UNFAIR TRADE PRACTICES (Section 301)

Since its enactment as part of the Trade Act of 1974, Section 301 has not been an effective means of enforcing U.S. rights against targeting and other "unjustifiable, unreasonable or discriminatory" foreign unfair trade practices.

Section 301: Clarifies the applicability of this statute to foreign industrial targeting practices and "reciprocity". Also depoliticizes Section 301 cases by resting the investigatory and decision-making authority in a single agency (as opposed to an interagency committee), thus establishing procedures more similar to AD/CVD procedures.

Section 302-309: Provides for a variety of procedural changes, including strict time limits, disclosure under administrative protective orders, improved data collection, etc.

Section 312: Provides for judicial review of administering authority's determination.

TITLE IV: PRIVATE REMEDIES IN DUMPING CASES

In 67 years, the Revenue Act of 1916 (the so-called Criminal Antidumping Act), has rarely been used and never successfully. The requirement of having to prove a specific intent to injure and the possibility of criminal sanctions have made this law unworkable.

> Section 401: Amends the Revenue Act of 1916 to eliminate the specific intent to injure requirement, criminal sanctions and treble damages in order to provide a viable private right of action in the federal courts to recover actual damages for dumping. ITC and DOC final determinations would be considered prima facie evidence of dumping, thus shifting the burden to proof to defendants. Failure to comply with discovery orders would trigger discretionary injunctive authority by the court to exclude further importation of merchandise.

Senator **Danforth**. Senator Mitchell.

Senator **Mitchell**. Thank you all, gentlemen, for your remarks. They are very useful to us as we deal with this problem.

I would merely want to ask Mr. Lison one question. You touched on really a unique situation where you have mutiple trade cases. You win a case with respect to one country and then imports come in from others. And you mentioned in your written testimony, which I have looked at, that you have worked on that with the Ways and Means Committee. Has the Commerce Department taken a position with respect to this circumstance?

Mr. **Lison**. My understanding of their position, Senator, is as much as they said this morning. There are certain technical things that they favor, but no provision that would provide effective relief to U.S. industry in that kind of a situation.

Senator **Mitchell**. We will certainly review that carefully, Mr. Lison, as we move to deal with legislation along the procedure that Senator Danforth suggested.

Thank you all very much. Thank you all, Mr. Chairman.

Mr. **Lison**. Senator, could I ask if the ongoing process that the chairman mentioned with the departments earlier—we would be pleased to be of any help that we may be in providing the views of our members, and I am sure the other members of the panel would be willing to do the same thing. And would welcome being an active participant in such a process.

Senator **Danforth**. Well, you are certainly welcome to be. My hope is that the next step in the process will not be a Cecil B. de Mill situation. You know, casts of thousands. But I would like and what I would hope is that three people sit down and go through the testimony, the ideas they have heard, the complaints, their own experience over the past 4 years and come up with some specific recommendations. Then they could go over those recommendations with the staffs of the various Senators who have been particularly involved in this, and the Finance Committee staff. I would hope that in the very near future we will have a bill, which, of course, would then go through the legislative process and be open to hearings.

I would hope we can do something this year. One of the problems we have in Washington is that everybody piles onto everything that is happening. I just hope we can get on with it because I think there is a pretty good knowledge now of what the situation is because of the help of you people, really. I mean you have done a very good job of focusing attention, of making specific recommendations, and of telling us your war stories, which are important for us to hear and important for the Commerce Department and the ITC to hear.

So my hope is that we are now at a position where the wizards can go back to some, you know, room and think it over and come up with some specific proposals. And then maybe we can improve on them.

Senator **Mitchell**. Mr. Chairman, if I may just say this to reassure Mr. Lison, I have been involved in this for quite some time and we have consulted regularly with a variety of small business groups and representatives, and we will continue to do so. And we will welcome your personal involvement on behalf of your industry and all of the others here.

Senator **Danforth**. Certainly.

Senator **Mitchell**. We will continue to do that in this entire process.

Mr. **Lison**. Thank you, Senator.

Senator **Danforth**. And be on the look out for the next installment of this drama because your analysis will be very, very welcome.

Let me ask a question. I don't know if you can do this or not. Is there any way you can put an economic value or a dollar figure on the cost of pursuing countervailing duty or antidumping remedies?

Mr. **Pinkerton**. Mr. Chairman, I think the easiest way to do it is take the cost that you are mandating on industry, costs that industry cannot control, costs that industry is saddled with by the edict of the Senate, the Congress, the House, whatever, and the White House. You have 6.7 percent worker's contribution to Social Security.

Senator **Danforth**. I'm sorry, but what I am talking about is the cost of one of these cases. The cost of pursuing an antidumping case, for example.

Ms. **Hogan**. Mr. Chairman, may I respond to that? Unfortunately, one of our other members, the Industrial Fasteners Institute, is not with us this morning, but I had occasion to use their statistics in testimony before the Senate Judiciary Committee during a similar hearing.

They have pursued remedies for 7½ years. They brought seven cases, including antidumping, countervailing duty, and two section 232 national security investigations. They actually expended $1½ million in legal fees, economic consultants and the whole gambit of expertise.

None of the actions really arrived at favorable solution for them. In addition, they have estimated that with all the people that they have had to bring to Washington from their own industry, the cost is close to $2½ million. IFI's managing director says that once you get involved in this vortex of legal proceedings before three different Federal agencies, you can't get out. The agencies are always asking, as the representative from the Maine Potato Council indicated, for some other form that has to be filled out, another area of expertise. And you always feel as the respondent that if you don't respond to this one, this is the one that is going to make or break your case, so you respond to all of them.

Senator DANFORTH. And so you would dispute what Commerce and the ITC said: All you have to do is file a simple petition and then they conduct the investigation themselves?

Ms. HOGAN. You are giving me an opening that I can't resist. With all deference to Mr. Holmer who is still relatively new on the job—when he was only on the job 1 week last June, we paid a courtesy call on him and presented to him 60 proposed reforms of the trade laws that had been worked out over a period of about 6 months by several of the leading law firms in this city that represent domestic industries.

He was very helpful in looking at them, and said DOC would get back to us within 2 to 3 weeks with their responses. Mr. Chairman, on the first day of the Ways and Means markup of the Gibbons bill, the Commerce Department finally came forward with their 45 proposed technical amendments. They have just been given to the committee. And at this point we still haven't had an opportunity to go through all those.

So I urge you to keep their feet to the fire as to the May 6 deadline because we have not had that kind of a response. On the contrary, what we have had is that they are always, it seems to us, overly concerned with what our trading partners may think, may do, may retaliate. As you and your colleagues have all mentioned this morning, they rarely are concerned with the small businessman who can't always make it here to Washington.

Even this morning, this small business hearing, we have got two small businessmen. All the rest of us are the Washington information industry. We are telling you what our members think, but these are the people that the committee really should look to.

Thank you.

Senator DANFORTH. Have you looked at the 45 Commerce Department recommendations?

Ms. HOGAN. I saw them very briefly on the eve of the markup, and they did look relatively technical.

Senator DANFORTH. My own view is that all of this is technical. My own view is that maybe having an advocate somewhere or an office somewhere is of some marginal benefit. I'm not sure. But I think often times in Washington we try to solve real problems by simply creating another desk somewhere.

Ms. HOGAN. That's true. But right now, for example, our industry has to go to the basic industry representative at Commerce. Well, United States Steel is a basic industry too. We would have to question how often they respond to United States Steel as compared to the members of small metalworking businesses.

Senator DANFORTH. But you could have any number of desks, but if you still had an impossible process——

Ms. HOGAN. Yes. The enforcement. We do have some good trade statutes which you were here to help enact in 1979. But how well are they really being enforced? And even if we do make all these changes, we still can't guarantee that enforcement. But I think we are sending signals. We are getting an opportunity, and that opportunity, I think, should be afforded to the small business people.

Senator **Danforth**. Well, I think this is our time at bat. I mean our hope is that we will have some ideas. My hope also is that the ideas will be ones that we can say, well, maybe this isn't perfect, but this is really a step forward. None of this is perfect. That is the lesson that I learned in 1979. When you are doing it, you don't know if it is a net plus or a net minus. But it clearly is something that a lot of people have been complaining about.

Mr. **Pinkerton**. Senator, I understand your question. I have spent in excess of $125,000 myself to win the case against India, which has gone out the window because as the young lady says we don't want to hurt anybody. But that's $125,000 that saved some jobs for a while. How much longer, I don't know.

Mr. **Lison**. Senator, if I could add to that. I think one of the costs that sometimes gets overlooked is that in order to begin to pursue your trade remedies, you must prove you are injured. For our case, injury means lost sales, lost profit. Once that sale is gone, it's gone. So we have incurred injury before we ever get into this subject. I think your estimate of $150,000 is the ante into the game. We have experienced that per country. And we are just embarking upon the appeals process.

Mr. **Sanstrom**. In closing, I would just also say that I think it's important for the committee to focus on the attitude of the Department of Commerce. The unfortunate irony is that a lot of what you are trying to accomplish in your legislation could probably be done right now under existing authority if Commerce were to choose to do it. Or just on the bases of changes in the law or creating new desks as you say, you must get the Commerce Department to realize that it is the only agency that enforces this statute. And if it doesn't nobody else will.

Senator **Danforth**. Well, you see it's supposed to be an advocate of small business. They are supposed to help people export. I think that they have spent so much time lobbying for a new Department of Trade that it's preoccupied them from things that they should be doing which are more useful, but that's a personal view.

Dr. **Button**. Mr. Chairman, I would like to make a point concerning the suggestion made earlier that all the small businesses needs to do is submit a petition. The required petition is, as you have noted, long, and detailed and complicated. And it is not as straightforward for many small businesses to fill out as those at Commerce suggest. The trade statistics do not always speak for themselves. Trade statistics can be very complicated.

Our clients have found professional assistance in dealing with trade and economic statistics frequently vital in making the basic case. I think the notion that the required questionnaire is simple is something that should not be left unchallenged.

Senator **Danforth**. Should not be?

Dr. **Button**. Left unchallenged.

Senator **Danforth**. Yes. But these are never going to be simple cases, are they?

Dr. **Button**. Correct.

Senator **Danforth**. And the reality is that we can try to streamline it, but the question of trying to determine what is the cost of a product manufactured in Korea or some place is never going to be a really easy question.

Dr. **Button**. Exactly. And the importers and the foreign producers clearly will respond to any simple submission by a small business with very sophisticated analysis. A small business by itself will have an extremely difficult time replying to the importer's submission.

Senator **Danforth**. Right.

I want to just conclude the meeting with one commercial. Mr. Pinkerton raised the question of the marking of country of origin in castings. H.R. 3398 the reciprocity bill, which eventually we will get to on the floor of the Senate, has such a provision that Senator Russell Long put in it. And you might take a look at that bill. And if you are so moved, write your favorite Senator.

Mr. **Pinkerton**. The Senator is on our side, sir.

Senator **Danforth**. Thank you very much. Thank you all very much.

[Whereupon, at 11:58 a.m., the hearing was concluded.]

[The following letter and statements were submitted for the record:]

THE U.S. TRADE REPRESENTATIVE,
Washington, DC, April 5, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on International Trade, Washington, DC.

DEAR JACK: I am writing to comment on Section 8 of S. 50, the Small Business and Agricultural Trade Remedies Act of 1983. We oppose the special import relief provisions for perishable products in Section 8.

The area of "fast-track" agricultural safeguards is one of great controversy internationally. We have worked with our trading partners to try to develop reasonable, working rules within the parameters of our obligations under the General Agreement on Tariffs and Trade, to provide import relief for perishable products. This problem is a difficult one—as we have discussed on many occasions with representatives of agricultural interests, Congress, and others. Various proposals have been considered. However, these proposals were judged unacceptable, either because they failed to meet the concerns of our industry or because they were in conflict with our GATT obligations.

In the present case, the provisions of Section 8 are inconsistent with Article XIX of the GATT. In particular, the "reason to believe" standard for action by the Secretary of Agriculture provided in proposed section 204(b) does not meet the requirements of Article XIX. We also believe that the fourteen day period provided would prove inadequate to make the determination required by our international obligations. Finally, we think that investigations of this nature should continue to be conducted by the U.S. International Trade Commission.

While we recognize that the provision in Section 8 appears to be similar to certain provisions in the Caribbean Basin Recovery Act of 1983, we must oppose any such provisions outside the limited and special context of the Caribbean Basin Initiative. Moreover, the CBI "emergency action" provisions merely concern removal of the special duty-free treatment conferred unilaterally by the CBI. Section 8 of S. 50, on the other hand, would provide a means to impose new duties and quotas.

Very truly yours,

WILLIAM E. BROCK.

STATEMENT OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION ON THE NEED TO REVISE U.S. UNFAIR TRADE LAW REMEDIES AVAILABLE TO SMALL BUSINESS

This statement is submitted on behalf of the Synthetic Organic Chemical Manufacturers Association (SOCMA) by its Committee on Small Business. SOCMA is a nonprofit trade association of 99 companies involved in the production, distribution, and utilization of synthetic organic chemicals. A majority of its members are small firms with annual sales unde $40 million. A list of SOCMA members is attached.

The Small Business Committee welcomes this opportunity to present its views on the "Small Business and Agricultural Trade Remedies Act" (S. 50) and the "Unfair Trade Remedies Simplification Act" (S. 1672). These bills address what we believe to be a serious problem: the inability of American small business to obtain relief from unfair trade practices as contemplated by the laws of the United States. Small chemical companies are in many instances adversely affected by unfair trade practices, and therefore have a vital interest in a proper, functioning system of remedies. The Small Business Committee believes that S. 50 and S. 1672 represent an important step towards making this system of trade remedies available to the small businesses of this nation. With certain modifications discussed below, these bills would make unfair trade remedies law much more accessible to small business.

I. Barriers to Small Business Utilization of the Unfair Trade Laws

The problems faced by small business in obtaining relief from unfair trade practices may be grouped under three major headings: Delay, High Cost, Lack of Information.

A. Delay

Countervailing duty and antidumping proceedings usually take a year or more before a final determination is made. Requests for extensions are routinely granted. Judicial review may add many more months. Because it takes so long to obtain relief under the unfair trade laws, small businesses are effectively foreclosed from obtaining a timely remedy. While delay impacts all businesses, it hits small business particulary hard. Small business frequently works on a very narrow cash margin. A small business simply may not be able to dedicate sufficient resources for the length of time it takes to achieve satisfaction in the current procedural morass. Furthermore, except in very rare cases, relief is only prospective. By that time, irreparable damage may have occurred. Most small businesses cannot hold out against sustained unfair import competition for such a substantial length of time and so they drop the product in question. As a result, the clear perception, as well as the reality, of the situation is that trade remedy proceedings drag on forever, and are not worth the effort.

B. High Cost

There is a significant financial deterrent to pursuing a remedy under the trade laws. Legal fees can exceed $100,000 in a complex case, economic consultant fees are in the tens of thousands, and the diversion of managerial resources all weigh heavily upon a small business. Often a small business will be pitted against a government-owned entity or huge private corporation in an unfair trade practice proceeding. In a battle with such financial giants, the small business is sadly outgunned. Furthermore, as the proceedings drag on for months, the costs associated with them inevitably rise.

C. Lack of Information

It is extremely difficult for a small business to obtain all the information that is presently required to file and prosecute an antidumping or countervailing duty case to a "successful" conclusion. Small businesses often cannot afford the time or the expense to keep up with all developments in international trade affecting their product lines. As a result, even if a small business is aware that imports are hurting its sales, it typically will not have access to sufficient (and sufficiently compelling) information to begin a formal dumping or countervailing duty proceeding. As this Subcommittee well knows, our government relies on private petitions to initiate enforcement of the trade remedy laws. If a small business does not have sufficient information to initiate a formal proceeding, no proceeding is commenced.

Others have discussed in far more detail the nature of the problems faced by small businesses seeking relief under the unfair trade laws. SOCMA will devote the remainder of this statement to ways in which the bills before this Subcommittee could be strengthened to provide effective relief to the small businesses of America.

II. Proposals for Reform

SOCMA believes the bills currently under consideration by this Subcommittee will result in major improvements in the manner in which small business is able to pursue relief under the unfair trade laws. SOCMA suggests the following modifications, in the belief that they are consistent with the philosophy behind S. 50 and S. 1672, and will strengthen those bills. SOCMA would strongly support a synthesis of the two bills which incorporates the modifications suggested below.

A. S.50

The creation of a Small Business Trade Assistance Office is an innovative and worthwhile concept. It would provide an institutional support system for small businesses seeking relief under the unfair trade laws. A few procedural changes would better enable this Office to fulfill these functions.

First, the Subcommittee should clarify that the bill's reference to assistance by the Small Business Trade Assistance Office in "proceedings relating to the administration of the trade laws" (§3(b)(1)) does not limit the Office's ability to provide assistance in judicial proceedings. While in many instances administrative proceedings are all that will ensue following the filing of an unfair trade practice petition, any given proceeding may also entail judicial review of administrative determinations. It would not make any sense to assist a small business entity in the administrative arena, only to abandon the company if the proceeding should move to the judicial arena. If the assistance to be rendered by the Small Business Trade Assistance Office is to be meaningful, it should be made explicit that such assistance does not end at the courthouse door.

Second, the provision regarding reimbursement of expenses incidental to prosecuting a complaint under the unfair trade laws should be amended to provide for reimbursement and payment on a current basis. Small business in America is not ordinarily characterized by huge cash reserves. Current trade remedies are not only expensive, they also require a large expenditure up front. (There are no "contingent fee" arrangements available in trade remedy law!) A small business which cannot afford to bring an unfair trade practice complaint obviously must be promptly reimbursed for its costs. Current payment of reasonable expenses will go a long way towards eliminating the financial deterrent to small business.

Third, it should be made clear that denial of assistance in meeting legitimate expenses will be the exception rather than the rule. It should be presumed both that the expenses to be paid are "reasonable" and that assistance is needed, within the terms of §3(b)(3)(A). Small businesses, for the very reasons that they need financial assistance to pursue their legal rights to trade remedies, are in a poor position to spend significant time, money, and resources to establish their right to that assistance. It obviously would be counterproductive to require an injured small business to spend significant resources proving that it was in need of additional resources! A presumption to this effect (rebuttable, of course, upon a proper showing), would aid in the ultimate achievement of the aims of the proposed bills. In addition, the legislation should provide some explicit, expedited, and inexpensive method to review a determination that trade remedy assistance should be denied to a small business entity.

Fourth, the reimbursement limit should not be frozen at any specific figure, but rather set at some reasonable level with provision made for automatic adjustment. A figure set some 20 percent higher than the average cost of a similar proceeding in the previous year might be appropriate, in that it would allow for certain unusual but not extraordinary expenditures which may be necessary in any given case. In addition, special provision should be made for reimbursement of expenses incurred in administrative review, appeal, and judicial review of determinations. The reimbursement limit should be tied to some relevant economic indicator, such as the Consumer Price Index, so that the Congress need not concern itself with yearly adjustments to the limit. At the same time, it should be recognized that the reimbursement limit is a ceiling, and that many successful complaints may be presented for less than that ceiling.

Fifth, it should be recognized that 50 percent reimbursement does not eliminate the strong financial disincentive associated with pursuing legitimate remedies under the unfair trade laws. It merely ameliorates an often intollerable financial burden. Such a scheme would not achieve the results of a program which provided for full reimbursement for legitimate and reasonable expenses. The 50 percent scheme may reduce the financial disincentives associated with pressing a claim against foreign small business, but it may well do nothing towards enabling American small business to stand against large (or government-owned) foreign concerns. Because relief is prospective and industry wide, petitioners should be viewed as acting in public interest and full reimbursement should be provided.

We believe that these changes will substantially strengthen the provisions of Section 3 of S. 50, dealing with the Small Business Trade Assistance Office.

B. S.1672

1. Expedited proceedings

The "fast track" expedited procedure provided for in §2 for both antidumping and countervailing duty proceedings is basically a sound concept. The Subcommittee should make clear, however, that extensions of time are to be granted only in extraordinary cases. It is our understanding that the current extension of time procedures have been utilized in over half of all proceedings under the current laws. Any new legislation should provide that extensions are to be granted only on a compelling showing of need.

SOCMA firmly believes that the time limits for expedited proceedings contained in S. 1672 are a step in the right direction. Fear of entering into lengthy proceedings acts as a substantial deterrent to the commencement of unfair trade remedy proceedings by small businesses.

2. The International Trade Advocate

The Small Business International Trade Advocate provided for in Section 3, like S.50's Trade Assistance Office, is a welcome innovation. However, some enlargement of the Advocate's role would be useful.

Specifically, we suggest that the Advocate be empowered to initiate an investigation under the unfair trade laws *sua sponte*, regardless of the manner in which a possible violation comes to his or her attention. The current version of the bill permits the Advocate to initiate an investigation only upon the request of an interested person. As noted earlier small business frequently is not able to gather sufficient information to initiate a proceeding under the unfair trade laws. Similarly, a small business may not be aware of a violation which may come to the attention of the Advocate. Permitting the advocate to initiate investigations without the formality of a request by an interested party would aid in redressing the informational disparity which exists between American small business and foreign producers.

In addition, the statute should not undertake to limit the Advocate's ability to request an ITC investigation to three requests per year. Such a limitation is arbitrary in nature and it would seem better to rely upon the good judgement of the Advocate not to request an excessive number of investigations.

III. Expansion of S.50 and S.1672

In order for the unfair trade laws to provide effective relief to small business, we believe some additions to the bills currently under consideration would strengthen them considerably. These additional provisions would ensure that full and fair relief is provided to small business and could easily be incorporated into a synthesis of S.50 and S.1672.

A. Early suspension of liquidation

It is essential that suspension of liquidation be made at the earliest stage of an antidumping or countervailing duty proceeding. The suspension of liquidation should occur at the time the International Trade Commission makes a preliminary determination that injury is being caused. One obvious benefit of an earlier suspension of liquidation is that small business will not continue to be burdened by unfair trade practices; earlier and more prompt relief would go far towards preventing a substantial amount of the injury the present laws permit, thus lessening the need for additional remedial measures.

In addition, prompt suspension of liquidation would eliminate some of the more perverse incentives of the current procedures. Presently, after the Commerce Department accepts a petition and the ITC preliminarily determines injury, foreign producers still are able to ship materials and importers can distribute them in the United States. Indeed, the preliminary determinations effectively puts them on notice that an adverse determination is possible, and that it may be advisable to ship all the products they can into the United States before suspension of liquidation and higher duties go into effect. Thus, the "window of vulnerability" between the initiation of a proceeding and the suspension of liquidation encourages, rather than deters or prevents, a surge of last-minute imports. The initiation of a proceeding can thus temporarily cause an increase in harmful imports. Small businesses, with their frequently narrow profit margins, are most vulnerable to a surge in harmful imports. Thus, this "window of vulnerability" is a substantial deterrent to small businesses contemplating seeking relief under the unfair trade laws. The relatively minor innovation of an earlier suspension of liquidation would stem such import surges.

B. Current cost management

Second, reimbursement and/or payment of costs associated with proceedings under the unfair trade laws should be provided at an early stage of the proceedings. An equitable system would provide for prompt reimbursement of expenditures after preliminary determinations of dumping or subsidization and injury have been made, with costs paid on a current basis thereafter.

Such a system of current cost reimbursement is essential if small business is not to be frozen out of its legal rights under the unfair trade laws. Small businesses typically do not posess the financial resources to pursue a successful unfair trade practice complaint. Profit margins are simply not substantial enough to support the extraordinary expenditures often encountered in an unfair trade practice proceeding. In addition, those small businesses most in need of relief under the unfair trade laws are those who are being financially hurt by unfairly priced imports from abroad. Providing for a current basis reimbursement system would mitigate the heavy financial deterrent against initiating a proceeding.

Current basis reimbursement would also benefit the public at large because, the unfair trade laws are cloaked with a strong public interest. Making it possible for small business to pursue legal remedies under the unfair trade laws will further the public policy interests inherent in the unfair trade laws. A system of current cost reimbursement could easily be incorporated into either S.50 or S.1672, as a modification to the system of financial support of small business complaints proposed in those bills.

C. Expanded ombudsman function

Third, a Small Business Ombudsman's office for trade matters should be established. The bills under consideration provide for small business assistance offices with relatively limited functions. A Small Business Ombudsman's office would be able to provide information, assistance in complying with procedural matters under the trade laws, investigatory materials, and the like. By providing for an office specifically designated to assist small businessmen with trade problems, and with a broad mandate to pursue such assistance, it is possible that more formal relief proceedings, informational systems, and the like need not be so frequently utilized. It would appear that S.50's Trade Assistance Office and S.1672's International Trade Advocate provisions would be a good foundation upon which to construct an office with more comprehensive authority.

The addition of provisions dealing with these three concepts--earlier suspension of liquidation, current cost reimbursement, a Small Business Ombudsman office--would go a long way towards making the unfair trade laws and their procedural administration more equitable. Such a system would permit small businessmen to take advantage of the legal system to protect their businesses and livelihood, and will reduce, if not eliminate, the various systemic biases which presently exist in favor of the unfair trade law violator.

IV. Conclusion

SOCMA supports the adoption of legislation which alleviates the burdens currently borne by small businesses seeking remedies under the unfair trade laws. The bills before the Subcommittee constitute a solid foundation for effective legislative relief. We urge that they be strengthened and promptly enacted into law.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

APR 3 1984

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We are pleased to respond to your request for the Administration's views on H.R. 4784, the Trade Remedies Reform Act of 1984. The Administration appreciates the efforts of your Trade Subcommittee to reform our antidumping and countervailing duty laws to make them fairer, more certain, and less costly. Like you, we are committed to the vigorous enforcement of the unfair trade laws. We cannot and will not allow American firms and workers to suffer injury from unfair foreign trade practices.

In reviewing the bill, we gave careful attention to the international obligations of the United States. If the United States violates its international obligations, other nations would have a right to retaliate against U.S. trade under the rules of the GATT and the MTN Codes. We should not subject American exports to this risk. In commenting on the bill, we have also considered the possibility that foreign governments would enact "mirror legislation." We should not enact rules prohibiting certain foreign practices unless we are prepared to live by the same rules in our own trade.

The Administration supports many provisions of H.R. 4784. We welcome your efforts to simplify the administration of the unfair trade laws, to make relief more accessible to injured firms and workers, and to make judicial review more effective. Accordingly, the Administration supports the amendments to the Trade Agreements Act of 1979 which would: (a) permit greater use of sampling techniques and averaging in antidumping investigations; (b) eliminate interlocutory judicial review; (c) give standing to ad hoc industry-labor coalitions; (d) require verification only in those administrative reviews in which revocation is proposed; (e) provide that where antidumping and countervailing duty investigations are initiated contemporaneously, there would be only one ITC injury hearing covering both proceedings; (f) direct the Secretary of Commerce to undertake a study of adjustments in antidumping proceedings; (g) eliminate administrative reviews where not requested by either petitioner or respondent; and (h) clarify that where a suspension agreement is intentionally violated, the U.S. Customs Service shall undertake a Customs fraud investigation.

The Administration must oppose the provisions of the bill relating to targeting, natural resource subsidies, and downstream dumping. While we are sympathetic to the concerns behind these proposals, we believe that they are contrary to the international obligations of the United States, represent dangerous international precedents, and pose direct or indirect threats to American exports. The reasons for our opposition are set forth in Appendix A.

A detailed section-by-section analysis of the remaining provisions of the bill is attached at Appendix B.

The Administration supports the concept of an artificial pricing test to replace both the antidumping and countervailing duty laws with respect to countries with non-market economies. We were disappointed that these proposals were dropped from the Subcommittee's bill. We urge their incorporation. In artificial pricing investigations, we believe that an injury test should be provided where required by the international obligations of the United States. A copy of our proposal is attached at Appendix C.

We also attach at Appendix D 44 highly technical, non-controversial changes to the antidumping and countervailing duty laws. These changes are designed to clarify ambiguities, correct mistakes, and improve the administration of the laws.

There is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Very truly yours,

Malcolm Baldrige
Malcolm Baldrige
Secretary of Commerce

William E. Brock
United States Trade
Representative

CLG:tjc

ADMINISTRATION OPPOSITION TO PROVISIONS OF H.R. 4784 RELATING TO EXPORT TARGETING SUBSIDIES, NATURAL RESOURCE SUBSIDIES, AND DOWNSTREAM DUMPING

1. Inclusion of Government Export Targeting Subsidies Within the Scope of the Countervailing Duty Law

The Administration strongly opposes section 104(a)(1) of the bill. Section 104(a)(1) would amend the countervailing duty law to cover so-called "export targeting" practices.

a. Although the Administration believes that targeting is unfair, we disagree with the bill's attempt to solve the problem through amendments to the countervailing duty laws. The countervailing duty laws were designed to prevent U.S. industries from being injured by foreign subsidy practices. "Targeting," as the term is generally understood, is not a subsidy practice, but a deliberate government policy of protecting and fostering infant export industries.

We believe that careful scrutiny of section 104(a)(1) demonstrates the impossibility of converting the countervailing duty law into a remedy for targeting. Despite the Subcommittee's efforts to define "targeting" and to create viable legal standards, the targeting provisions of the bill are unworkable.

Instead, we believe that targeting must be addressed at a governmental level, through the GATT, through U.S. diplomacy, and through the possible use of U.S. retaliation under section 301 of the Trade Act of 1974 (19 U.S.C. 2411). As a matter of principle, the United States should first pursue a multilateral solution to targeting in the GATT. Until it can be shown that the existing GATT rules are inadequate to deal with protectionism for infant export industries, we should avoid doing violence to the international trading system by a unilateral expansion of our countervailing duty law. This course reduces the risk of unnecessary confrontation and strengthens the GATT. We can also pursue foreign government targeting through bilateral diplomacy. If foreign governments fail to respond to the GATT or bilateral diplomacy, the United States can retaliate pursuant to section 301 of the Trade Act of 1974 against unreasonable and unjustifiable foreign government practices which burden U.S. commerce.

b. Although we recognize that the Subcommittee sought to create a workable definition of "targeting," we believe that the bill's definition is so broad as to include legitimate forms of government behavior and indeed many programs of the United States government. The bill defines "targeting" as "any government plan or scheme consisting of coordinated actions . . . the effect of which is to assist the beneficiary to become more effective in the export of any class or kind of merchandise." Many legitimate government policies have the effect of benefiting export competitiveness. Our space program, for example, had the effect of aiding U.S. exports of computers, semi-conductors, and satellites, even though its purposes were wholly unrelated to export promotion. Defense Department procurement has the effect of benefiting U.S. exports of aircraft and aerospace products. Many agricultural programs have the effect, but not the purpose, of aiding the competitiveness of U.S. agricultural exports. In short, we believe that the language of the bill is so broad as to sweep up legitimate government programs and subject them to countervailing duties.

Although the bill goes on to provide specific examples of "targeting" activity, these examples raise similar problems of overbreadth. For example, the bill defines targeting to include "assistance in planning and establishing joint ventures which have an anticompetitive export effect, the relaxation of antitrust rules normally applied to beneficiaries to assure the development of anticompetitive export cartels, the providing of assistance in planning or coordinating joint research among selected beneficiaries to promote export competitiveness . . . ." Nevertheless, this language appears to cover various antitrust exemptions administered by the United States. The Department of Justice and the Federal Trade Commission regularly review corporate mergers to determine whether the mergers comply with the antitrust laws. The Export Trading Company Act (96 Stat. 1233) and the Webb-Pomerene Act (15 U.S.C. §61 *et seq.*) allow export associations formed by U.S. firms to obtain exemptions from the antitrust laws if they meet certain criteria and register with the FTC or the Department of Commerce. The U.S. Department of Justice regularly grants antitrust exemptions to joint research and development ventures formed by U.S. companies. Indeed, the Department recently approved several joint R & D ventures in the computer industry. These government antitrust activities arguably fall within the bill's definition of targeting. The bill therefore illustrates the problem of attempting to distinguish government practices that constitute "targeting" from those practices that plainly do not.

c. In our judgment, the targeting provisions of the bill would be impossible to administer and apply. The bill would require the Commerce Department to quantify the "full benefit of the subsidy." We are not aware of any rational way of quantifying the economic benefits of home market protection, an antitrust exemption, or restrictions on foreign investment, particularly when such conduct occurs over a long period of time and in different market conditions. This problem is compounded by the nature of the countervailing duty law, which requires the Department of Commerce to allocate the amount of the subsidy to the price of the imported product. In our judgment, it would be impossible to quantify a price advantage derived from such conduct in a fair, consistent, and realistic manner. Determinations of the amount of a "targeting" subsidy would be inherently speculative and arbitrary, and at risk on judicial review. In short, the targeting provisions would introduce an uncertain and arbitrary element to the countervailing duty law, a result wholly contrary to the purposes of the bill.

d. The export targeting amendments of section 104(a)(1) invite the implementation of "mirror legislation" by our trading partners. If these provisions are enacted into law, they will be copied by many of our major trading partners who have antidumping and countervailing duty laws of their own. These countries could seek to apply countervailing duties to U.S. exports which benefit from government funding or from antitrust exemptions. Thus, countervailing duties could be levied on U.S. exports which benefit from the procurement practices of the Department of Defense or NASA, U.S. agricultural policies, and other legitimate government practices that have the effect of indirectly aiding the competitiveness of our exports.

The amendments also create a risk that foreign governments will retaliate against U.S. exports. We cannot assume that other countries will stand by if the United States unilaterally expands the definition of a subsidy in a manner contrary to international understandings, particularly if the U.S. interpretation results in the imposition of countervailing duties for programs that other countries perceive as legitimate government policies. The United States is already the most aggressive interpreter and enforcer of the Subsidies Code. Further distancing us from our trading partners is likely to provoke challenges to our interpretation of a "subsidy," and could result in GATT authorization to retaliate.

e. Many of the targeting amendments are unnecessary, since they cover practices already prohibited by the U.S. countervailing duty law or better addressed through the GATT. To the extent that targeting is associated with domestic or export subsidies, these subsidies are subject to the imposition of countervailing duties under existing U.S. law. While the bill would add specific language regarding "[t]he exercise of government control over banks and other financial institutions that requires the diversion of private capital on preferential terms to specific beneficiaries or into specific sectors," this language would not alter existing law or administrative practice. The Department of Commerce has consistently treated government-directed preferential financing from banks as a countervailable subsidy. See, e.g., Certain Steel Products from the Republic of Korea, 47 Fed. Reg. 57535 (Dec. 27, 1982).

In addition, the United States can challenge many of the targeting practices listed in the bill under existing provisions of the GATT. The bill refers to various targeting practices, including "[s]pecial protection of the home market" and investment restrictions, including domestic content and export performance requirements." Under Article III of the GATT, a contracting party must provide "national treatment" to the products of other GATT signatories. Article III prohibits discriminatory import restrictions and domestic content requirements. Thus, after a complaint by the United States, a GATT Panel recently found that domestic content requirements contained in Canada's Foreign Investment Review Act (FIRA) were contrary to the General Agreement. Similarly, the use of quotas to protect domestic markets generally is prohibited by Article XI of the GATT. In our judgment, the GATT is the appropriate forum to challenge government practices that have the effect of protecting and fostering infant export industries.

2. Natural Resource Subsidies

The Administration also strongly opposes the "natural resources" amendments contained in section 104(a)(1) of the bill. Section 104(a)(1) would amend section 771(5) of the Trade Agreements Act of 1979 to reach special "natural resource" subsidies. Under the bill, a natural resource subsidy would exist whenever a government sells a natural resource product to domestic industries at a price below the export price or the fair market value (the price a willing buyer would pay a willing seller in an arms-length transaction).

a. The natural resources amendments represent a major departure from longstanding U.S. and international practice regarding the definition of a subsidy. Under existing U.S. law, subsidies are potentially countervailable only if provided to a "specific enterprise or industry, or group of enterprises or industries." As the U.S. Court of International Trade held in Carlisle Tire & Rubber Co. v. United States, Slip Op. 83-49 (C.I.T. May 18, 1983):

> [A]doption of Carlisle's literal view that generally available benefits are a bounty or grant would, if taken to its logical extreme, lead to an absurd result. Thus, included in Carlisle's category of countervailable benefits would be such things as public highways and bridges, as well as a tax credit for expenditures on capital investment even if available to all industries and sectors.

The court concluded:

> To suggest, as Carlisle implicitly does here, that almost every import entering the stream of American commerce be countervailed simply defies reason. Moreover, in such a circumstance the burden that would be placed on the administering authority would be overwhelming, representing far more than mere administrative inconvenience.

The proposal would also go well beyond the internationally accepted definition of subsidy. A countervailable domestic subsidy is government action or direction that attempts to give one or more industries a special advantage over other industries in the same economy. Since all governments undertake numerous measures which alter economic conditions, it has become a fundamental principle of international and U.S. law that government programs and activities which are generally available -- such as irrigation projects, high quality transportation systems, investment tax credits, capital cost recovery allowances, police and fire protection, rural electrification programs, and public health programs -- are not considered to be countervailable domestic subsidies, even though such activities could be said to benefit companies by indirectly lowering their cost of production. Generally available domestic programs do not distort allocations of resources within an economy. Absent any distortion of resource allocation, domestic programs merely assist the economy as a whole, not particular industries or sectors. Section 104(a)(1) would violate these principles by subjecting generally available programs to countervailing duties.

b. For the United States to undertake a drastic and unilateral departure from the internationally accepted definition of a countervailable subsidy would expose U.S. exports to a serious risk of retaliation. We believe that the adoption of the natural resources amendments would subject the United States to a GATT challenge, which we would almost certainly lose. The result could be GATT authorization to retaliate against U.S. exports.

c. Even if we succeed in persuading our trading partners to adopt our definition of a subsidy, the result would be an hollow victory, since the expansion of the Subsidies Code to cover natural resources subsidies would expose U.S. exports to countervailing duties elsewhere. The United States regulates the price of natural gas. During the late 1970s, when natural gas prices in the United States were lower than world prices, exports of U.S. textiles were a source of major friction between the United State and the European Community. The EC argued that such textiles benefited from low U.S. natural gas prices. While the Administration has supported the deregulation of natural gas, natural gas prices remain subject to regulation. As a result, U.S. textiles and petrochemicals, which arguably benefit from natural gas controls, would be potential targets for foreign countervailing duties. We note that other U.S. industries benefit from government control of natural resources. For example, Western agricultural products benefit from government irrigation projects, while industries in the Tennessee Valley and the Pacific Northwest benefit from government electricity. Exports from these areas would be in jeopardy.

d. In the petrochemical sector, U.S. firms have significant investments in foreign countries with abundant hydrocarbon natural resources. Some countries maintain differential pricing systems and arguably fall within the bill's requirement that the cheap natural gas "is not freely available to United States producers for purchase of that product for export to the United States." To deny these firms access to the U.S. market for the goods they produce in these foreign countries raises questions about the fairness and consistency of our investment policy.

e. The natural resources provisions of the bill are unfair because they would prevent developing countries with abundant natural resources from capitalizing on their comparative advantage. The effect of the bill is to compel a developing country with an abundance of cheap natural resources either to raise its domestic price to world market levels or to lower its export price from world market levels to the domestic price level. Accordingly, the bill would prevent the developing country from using cheap natural resources to encourage the establishment of domestic industries or alternatively from realizing the profits of exporting its natural resources.

f. The natural resources amendments represent an intrusion into the sovereign affairs of foreign nations. Many developing countries have chosen to exploit an abundance of cheap natural resources by (1) encouraging the establishment of downstream industries in the home market and (2) realizing profits from the sale of natural resources abroad. It is true that this choice involves lost "opportunity costs," i.e. a decision to forgo potential profits. Nevertheless, as long as domestic sales are above the production cost and realize a profit, they cannot be deemed irrational, unreasonable, or economically unsound. Governments, in general, do not necessarily behave like private companies and maximize profits. Instead, they sometimes adopt broader economic and social perspectives. Such policies should not be challenged under our countervailing duty laws, unless they represent a subsidy in the generally understood meaning of the word.

3. Downstream Dumping

The Administration strongly opposes section 104(b) of the bill. While the idea of attacking downsteam dumping has a certain amount of theoretical appeal, we believe that section 104(b) would violate Article VI of the GATT, cause serious unfairness to innocent purchasers, and result in abstract and unrealistic calculations of dumping.

As defined in the bill, downstream dumping occurs when a product subject to an antidumping or countervailing duty investigation incorporates materials or components which were themselves sold either for less than the purchase price in the country where the material or component was manufactured or at less than the cost of production. The provision would apply if the dumped material or component has "a significant effect on the cost of manufacturing or producing the merchandise under investigation." For example, if a valve producer in Country A sold dumped valves to an engine producer in Country B, and these engines were subsequently exported to the United States, dumping duties could be levied on the engines to reflect the benefit derived from the dumped valves.

a. The downstream dumping provisions of the bill would violate the GATT. GATT Article VI:1 defines dumping as the sale at less than fair value of a like product. Thus we compare only prices (or production costs) of the product imported into the U.S. subject to an antidumping investigation, and of a like product sold in the home market or a third country. An input (e.g., a valve) is not "like" the product into which it is incorporated (e.g., an engine). It is the engine which is the merchandise imported into the U.S. and the subject of an antidumping investigation. The engine is not dumped if it is sold at not less than fair value, even if the valve used in that engine may have been dumped.

b. The downstream dumping provisions are inconsistent with the theory of dumping. The bill would determine whether downstream dumping exists by reference to the "generally available price" of the input in the country where the downstream product is produced. This generally available price apparently would reflect the prices of all of the firms producing the input in that country; in other words it would be a country-wide aggregate.

The use of an aggregate reference price is contrary to the theory of dumping and Article VI:1 of the GATT. Dumping consists of individual firm behavior, and is measured by the firm's price in the home market and in the export market. It is not measured by comparing the firm's price with an aggregate or average of the prices of various other firms.

This departure from economic theory would have two effects: (1) it would penalize efficient firms whose prices and costs are below the industry average (these firms would still be subject to the downstream dumping provisions because their prices were less than the "generally available price"); and (2) it would result in unfairness because a firm could not avoid dumping liability through its own pricing behavior, but instead would be dependent on the pricing behavior of other firms.

c. The downstream dumping provisions of the bill would be impossible to administer in practice. The downstream dumping amendments would require the Department of Commerce to conduct simultaneous dumping investigations of a product and its various allegedly dumped materials and components. A product with a variety of materials and components would necessarily result in a multiplicity of investigations and a mushrooming of the Department's investigatory responsibilities. The effect would be to introduce additional complexity to investigations that are already subject to stringent statutory time limits. In addition, the bill proposes standards that are unworkable. For example, the administering authority may base the margin of dumping for the dumped material or component on the difference between the foreign market value of such product and either "(1) the generally available price for the product in such country, or (2) if such price is artificially depressed by reason of any subsidy or other sales at below market value, the generally available price for that product that would pertain in such country but for such depression." A generally available price is a theoretical abstraction, particularly in a large country with different markets, buyers, and conditions of sale. In addition, section 104(b) directs the Commerce Department to adjust one theoretical abstraction (the generally available price) by a second, namely the price but for various subsidies or less than fair value sales. The result is likely to be highly arbitrary calculations with no basis in economic reality. Such determinations of dumping would be at serious risk on appeal.

d. The downstream dumping amendments have serious potential for unfairness. A purchaser usually cannot tell if a material or component is being dumped. He or she is unlikely to be aware of the seller's cost of production or home market price. Nevertheless, by purchasing imported materials or components, an innocent producer may unknowingly subject itself to liability for dumping duties. In addition, the seller of the dumped input may well refuse to cooperate with an antidumping investigation. A seller would have little or no incentive to cooperate with a downstream dumping investigation, particularly in view of the burden and expense of such investigations. The purchaser, however, must have the cooperation of the seller of the allegedly dumped material or component to defend against the allegations. In short, the innocent purchaser may be unfairly deprived of any opportunity to mount an effective defense.

e. The enactment of mirror legislation by foreign countries would pose a serious threat to U.S. companies. We know that dumped materials and components are sold in this country. The dumping decisions of the Commerce Department are proof of this fact. If we enact a downstream dumping provision, other countries are likely to adopt mirror legislation. If so, a U.S. producer of washing machines could be subjected to liability for incorporating dumped or subsidized foreign steel in his product. This risk would be compounded by the inherent arbitrariness of calculations of downstream dumping, and the lack of transparency in many foreign dumping proceedings. We should not enact downstream dumping rules unless we are prepared to live with the same consequences in our own trade.

SECTION-BY-SECTION ANALYSIS OF H.R. 4784

(1) Sections 101(a)(1), (2), and (b) amend sections 701(a) and 705(b)(1) of the Tariff Act of 1930 ("the Act") to explicitly permit countervailing duty ("CVD") investigations when there are present sales for future delivery, but no present imports. The Administration supports this proposal. As the CVD investigation of Railcars from Canada demonstrated, in situations where the sale occurs years before actual importation, the loss of the bid (sale to a foreign competitor) is the point at which injury occurs. This provision would codify the current practice of Commerce and the International Trade Commission ("ITC") in such cases, and ensure that the court would not hold that a proceeding could not be initiated until importation began.

(2) Sections 101(a)(3) and (c) amend sections 705(b)(1) and 731 of the Act to expand the coverage of the antidumping (AD) and CVD law to explicitly include transactions which, while termed leases, are equivalent to sales. The Administration supports this proposal. The proposal would clarify that the mere denomination of a transaction as a lease does not remove it from the scope of the AD and CVD law.

(3) Sections 102(a)(1) and (b)(1) amend sections 704(a) and 734(a) of the Act to prohibit Commerce from terminating an AD or CVD proceeding based on an agreement by the foreign government to restrain imports unless the President authorizes such termination. The President could accept such an agreement only

after consulting with potentially affected consuming industries and all U.S. producers of the product. In addition, the President must determine that the effects of the agreement on U.S. consumers would not be more adverse than the imposition of AD or CVD duties.

The Administration opposes this provision. The bill's requirement that the President authorize a termination agreement is an unnecessary administrative burden and is unlikely to alter the disposition of a particular case. If the President's involvement seems appropriate in a particular case, the Secretary of Commerce can bring the proposed settlement agreement to his attention.

The bill's requirement that the President consult with consuming industries and assess the impact of an agreement on U.S. consumers is in our view unnecessary. Under current law, any termination of an investigation based upon the withdrawal of a petition must be in the public interest. This determination of the public interest necessarily includes the impact of the agreement on consumers.

In any case, we believe that the requirement that the President determine that an agreement would not have a greater adverse effect on consumers than the imposition of countervailing duties is unworkable. The bill does not provide any standards for determining whether the imposition of antidumping or countervailing duties would be more adverse for consumers than quotas.

Finally, the bill's safeguards against quantitative restraint agreements are unnecessary. In over four years of administering the AD/CVD law, the Commerce Department has terminated an investigation based upon a government-to-government quota agreement in only one instance (in 1982 with the European Communities concerning extensive unfair steel trade). The Commerce Department rejected several other requests for such agreements during recent AD and CVD investigations of steel products.

We note that in some situations quantitative restrictions are the most flexible and effective means of remedying the injury to a domestic industry. Accordingly, we believe that the Commerce Department must have the flexibility to negotiate and maintain such agreements.

(4) Section 102(a)(2) amends section 704(b) of the Act to preclude the use of offsets to net subsidies as a basis for suspending a CVD investigation. The Administration opposes this proposal. The Commerce Department should maintain its ability to suspend an investigation based on offsets in situations meeting the existing statutory criteria. The Commerce Department actively enforces suspension agreements involving offsets. Indeed, the Commerce Department has tentatively terminated two

major suspension agreements after obtaining information that the country involved had failed to levy the offset tax required by the agreements for up to five months. We believe that suspension agreements involving offset taxes are enforceable and in certain situations are the best way to resolve an investigation.

In some cases the U.S. petitioner prefers an export tax suspension agreement to an elimination or renunciation agreement. For example, the Commerce Department suspended the CVD investigation of Refrigeration Compressors from Singapore based upon an offsetting export tax. Commerce initially rejected Singapore's proposal for this kind of suspension agreement. The petitioners, however, preferred a suspension agreement based on on offset tax.

(5) Sections 102(a)(2), (a)(4), and (b)(2) amend sections 704(b)(1), (2), (d)(2) and 734 (b)(1) of the Act to require that foreign governments eliminate subsidies on the day a suspension agreement becomes effective, rather than within six months after the effective date of the suspension agreement as provided by current law. The Administration opposes this proposal. Eliminating or offsetting a subsidy usually requires a change in the law of the foreign government providing the subsidy. It is unrealistic to expect a foreign government to enact legislation overnight. Were other countries to adopt the same provision, the United States would only rarely be able to comply.

The Commerce Department has interpreted existing law to allow only the minimum time necessary for a foreign government to implement a change of law. Whenever possible, the Commerce Department demands a shorter phase-out period. Moreover, the fear that massive quantities of imports will injure the U.S. industry during the phase-out period is unfounded. Under section 704(d)(2) of the Act, exports are not permitted to increase during the phase-out period.

(6) Sections 102(a)(3) and (4) amend sections 704(c) and (d) of the Act to require the President to approve suspensions of CVD investigations based on quantitative restraints. Under the bill, the President can accept such suspensions only after consulting with potentially affected consuming industries and all U.S. producers. In addition, the President must determine that the effect of the agreement on U.S. consumers would not be more adverse than the imposition of CVD duties.

The Administration opposes this provision for the reasons set forth in our comments on sections 102(a)(1) and (b)(1) of the bill. We note that the Commerce Department has never suspended an investigation based on a government-to-government quantitative restraint agreement. While the Administration tentatively explored such an agreement at the government of Brazil's request in connection with some pending steel investigations, we did not conclude such an agreement.

(7) Sections 102(a)(6) and (b)(5) amend sections 704(i) and 734(i) of the Act to provide that where the Commerce Department determines that a suspension agreement has been intentionally violated, it shall notify the U.S. Customs Service. The Customs Service shall then undertake an investigation of the alleged fraud. The Administration supports this proposal. The proposal clarifies that Customs, which conducts all other investigations of customs violations, shall conduct this type of investigation as well. (The Administration notes that this provision would be applicable to violations affecting the importation of merchandise; violations solely within a foreign country could not be subject to a customs investigation.)

(8) Section 103(a)(2) would amend section 751(a) of the Act to provide that an administrative review shall not be conducted unless the petitioner or respondent requests a review proceeding. The Administration supports this proposal. The proposal would eliminate the time and expense of conducting unnecessary review proceedings in which neither the petitioner nor the respondent has any interest.

(9) Section 103(a)(3) adds new sections 761 and 762 to the Act. These sections provide that within 90 days after the President accepts a termination or suspension agreement based on quantitative restraints, the President shall enter into negotiations for the purpose of eliminating or offsetting the injurious effect of, the dumping or subsidization. The

suspension cannot continue past its first anniversary unless the negotiations succeed. In no event can the quantitative restraint be in effect for more than two years.

The Administration opposes this proposal. Dumping is a corporate practice over which governments have little, if any, control. Therefore, seeking agreement from a foreign government to eliminate dumping is inappropriate.

The Administration also opposes the provisions regarding the negotiation of suspension agreements in subsidy cases. The bill would unnecessarily bring the President into the process of negotiating and administering suspension agreements in subsidy cases. As noted above, if the President's involvement seems appropriate in a particular case, the Secretary of Commerce can bring the problem to his attention. In addition, the procedural requirements of the bill would remove the flexibility necessary to negotiate and administer suspension agreements.

(10) Section 104(a)(1) amends section 771(5) of the Act to include export targeting practices as subsidies under the CVD law. The Administration strongly opposes this provision for the reasons set forth in Appendix A.

(11) Section 104(a)(1) amends section 771(5) of the Act to include a special natural resource subsidy provision. The Administration strongly opposes this provision for the reasons

set forth in Appendix A.

(12) Section 104(a)(2)(A) amends section 771(7) of the Act to require the ITC to cumulate imports from two or more countries in injury investigations if there is a reasonable indication that imports from each country have contributed to the injury.

The Administration supports continuing the current ITC practice of deciding whether to cumulate on a case-by-case basis. Accordingly, we oppose the bill's attempt to change the standard for cumulation. The bill would require cumulation whenever there is a "reasonable indication" that imports from different countries are contributing to injury. A reasonable indication standard is inappropriate in final injury investigations. We believe that use of a lower standard in a final injury investigation would violate the Antidumping Code, which requires that determinations of injury be based on "positive evidence."

(13) Section 104(a)(2)(C) also amends section 771(7) of the Act by adding a new subsection containing statutory criteria for ITC determinations of threat of material injury. The Administration supports the codification and clarification of current ITC standards. The Administration believes that an effective provision is a vital element of the U.S. trade laws. However, we oppose any extensions in the scope of the threat of material injury test which invite affirmative injury determinations where the alleged threat is purely speculative, rather than real and

imminent. We defer to the ITC on whether this provision codifies current ITC practice.

The Administration opposes the provisions of subparagraph (F) (ii), which require the ITC to consider "export targeting subsidies" in its determinations of threat of material injury. As noted in Appendix A, we believe that the bill's definition of an "export targeting subsidy" is unworkable and overbroad.

(14) Section 104(a)(3) amends section 771(9) of the Act by adding a new subsection permitting ad hoc industry-labor coalitions to have standing as interested parties to AD and CVD investigations. The Administration supports this proposal, which would overturn a court decision in Matsushita Electrical Industrial Co. v. United States, 529 F. Supp. 664 (C.I.T. 1981). No valid purpose is served by denying standing to such coalitions.

(15) Section 104(b) adds a new section 771A to the Act, which would make actionable subsidies paid or bestowed by the government on a product "upstream" from that under investigation (i.e., an input) in the same country if: (1) the price to the downstream user was less than the generally available price for that input in that country, and (2) the price preference had a significant effect on the cost of production of the product under investigation. The provision would require that such subsidies be calculated in both AD and CVD cases, and provides that for

purposes of this section the members of a customs union (e.g., the European Communities) should be treated as one country.

The Administration supports the first part of the proposal, which codifies current Commerce Department practice. We have imposed countervailing duties where an input is provided to a particular industry or group of industries at a price lower than the generally available price, providing the subsidy affects the price of the merchandise under investigation.

We oppose the proposal to apply this provision in AD cases. As previously stated in our comment on the "downstream dumping" provision, dumping and subidization are distinct practices. The grant of a subsidy may or may not result in price discrimination (dumping). Further, under the GATT and the Dumping Code, the inclusion of a subsidy in a determination of dumping is not permitted. As a practical matter, it is not feasible to make determinations of both subsidization and dumping within the time provided for investigations. Where both subsidization and dumping may be occurring, a petitioner may (as many already have) file under both laws.

The proposal to treat customs unions such as the EC as one country is unnecessary. Under section 771(3) of the Act, the term "country" is defined to include customs unions like the EC.

(16) Section 104(b) and new section 771A to the Act also make

downstream dumping actionable under the AD law. The Administration opposes this section for the reasons set forth in Appendix A.

(17) Section 105 amends section 773(c) of the Act to require Commerce to consider whether the relevant sector of a country's economy is state-controlled to the extent that sales or offers for sale of the merchandise do not permit a determination of foreign market value under the normal rules. Section 105 would change existing law, which now provides for a determination of whether the country, not the sector, is state-controlled.

The Administration opposes this proposal. The proposal is unnecessary and could create severe diplomatic problems for the United States. The so-called "bubbles" of state control in market economies are never so all-pervasive that normal dumping rules (home market prices, third-country export prices, or constructed value) cannot be used. The proposal would needlessly complicate the administrative process and would create major diplomatic problems. Our friends and allies would object vehemently to a determination that certain sectors of their economies are non-market.

In addition, the proposal is inconsistent with the GATT. The Second Supplementary Provision to paragraph 1 of Article VI of the GATT provides an exception to normal price comparisons in dumping cases for products "...from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the state." The proposal is contrary to the GATT because it would apply a non-market pricing test to a country with a market economy. It therefore exceeds the scope of the GATT exception.

The Administration believes the Committee should reconsider the alternative approach to nonmarket economies (NMEs) that was contained in the draft of the bill prior to February 9, 1984. That version of the NME provisions would replace the current AD provisions on NMEs with an artificial pricing standard. Under this artificial pricing standard, a NME import would be considered to be sold at less than fair value if the import is imported at a price lower than some readily determined artificial price (calculated on the basis of the price of domestic producers and imports from market economies). The Administration's suggested amendments to the NME provisions are described in detail at Appendix C.

The Department of Commerce has stated for some time that the current standard (price or cost in a chosen surrogate market economy) is arbitrary, costly, and difficult to administer. The Department believes that an artificial pricing standard would eliminate these problems.

(18) Section 106 amends section 774(a) of the Act to provide that if AD and CVD investigations are initiated simultaneously, the

ITC would normally conduct one injury hearing covering both proceedings. The Administration supports this proposal, which would eliminate an unnecessary but costly aspect of current procedures.

(19) Section 107 amends section 776(a) to limit verifications to all current investigations and to administrative review proceedings in which revocation of an AD or CVD order is sought. The Administration supports this proposal. At present, over 4,000 foreign companies are subject to AD and CVD orders. The Administration believes that Commerce can best use its resources by limiting verification to revocation proceedings as proposed by section 107. Of course, Commerce would retain the discretion to conduct verification in administrative reviews not involving revocation whenever it felt that circumstances so warranted.

(20) Section 108 amends section 777 of the Act to (1) permit release of proprietary information to a Customs Service officer conducting customs fraud investigation, (2) specify more precisely the required nonconfidential summary of proprietary information, (3) permit standing requests for a protective order to be filed at the start of an investigation, and (4) forbid different treatment of house counsel and outside counsel.

The Administration supports the first provision. It would remove an anomaly in the law, under which Commerce cannot now allow

Customs officers conducting fraud investigations of products involved in AD or CVD proceedings to see proprietary data submitted by those suspected of such fraud.

The Administration also supports the second and third provisions. They would standardize, simplify, and reduce the time and cost of obtaining information under a protective order.

The Administration opposes the fourth provision. The language is too broad. It ignores the real distinctions in both the need of house counsel versus retained counsel for the information and the possibly greater likelihood of inadvertent disclosure by house counsel in certain situations. The Administration prefers language precluding access to information solely on the grounds that the request is made by house counsel. We support balancing on a case-by-case basis the need of the submitter for confidential treatment of the information, and the need of the requester to see the information.

The Administration believes its view is supported by the recent decision of the Court of Appeals for the Federal Circuit in United States Steel Corp. v. United States, Appeal No. 84-639 (C.A.F.C. March 23, 1984), which overturned a lower court ruling that effectively established a per se rule against release to house counsel. This CAFC decision eliminates any need for this provision of the bill.

(21) Section 109 adds a new section 777A to the Act, which would authorize Commerce to use averaging and sampling techniques: (1) in administrative reviews of AD orders as well as AD investigations, and (2) in determining both United States price and foreign market value. Commerce would select the appropriate samples and averages. The Administration supports this proposal. It would greatly improve administrability of the AD law without causing any significant decrease in fair and equitable application.

(22) Section 110 amends section 516A and various other sections of the Act to eliminate interlocutory judicial review. The Administration supports this proposal. All judicial review should be concentrated in one proceeding after the end of the administrative process. Interlocutory review is costly, time consuming, and seldom effective (since invariably a final decision mooting the litigation is made before the judicial review is completed). Concentrating review after the administrative process reduces cost and administrative burdens without sacrificing the right of any party to challenge any aspect of the Commerce or ITC determination.

(23) Section 201 adds a new section 339 to title 19 of the U.S. Code. It would establish a trade remedy assistance office in the ITC. The office would provide information concerning remedies under the trade laws and procedures for filing petitions to small

businesses. The Administration supports the establishment of a small business trade assistance office in the Department of Commerce. The office would inform small businesses of remedies and benefits available under the unfair trade laws and of procedures for filing petitions under these laws, and would assist them in preparing petitions for relief under them. Such an office could serve a useful and needed purpose.

(24) Section 201 also adds a new section 340 to title 19 of the U.S. Code, establishing a targeting subsidy monitoring program in the ITC.

The Administration opposes this provision. It is unnecessary because it would duplicate a program already established in the Department of Commerce. In addition, the proposal would create significant additional burdens for our economic reporting units overseas.

(25) Section 202 directs the Secretary of Commerce to undertake a study of adjustments to United States price and foreign market value in AD proceedings, and to recommend to Congress the need for, and means of, simplifying and modifying current practices in this area. The Administration supports this proposal. AD adjustments are complex and not amenable to simplistic change. Careful study of the entire area is preferable to piecemeal legislation.

ARTIFICIAL PRICING REMEDY FOR NONMARKET ECONOMY IMPORTS

The Administration supports new legislation addressing the problems created for U.S. industries by imports from nonmarket economy countries (NMEs). The antidumping law's current provisions, calling for the use of the price or cost of production of a producer in a market economy who agrees to cooperate, have proved to be unsatisfactory. It is very difficult and time consuming to find any surrogate country which: (1) is at a comparable stage of economic development, (2) manufactures the products under investigation, and (3) is willing to cooperate in supplying information and permitting it to be verified. Neither the petitioner nor the NME exporter can know in advance how foreign market value will be calculated. In addition to the uncertainty of the process, it is costly and very difficult to administer. The countervailing duty law makes no special provisions for investigating imports from NMEs. As recently discussed in detail in the Department of Commerce's preliminary CVD determinations on *Wire Rod from Czechoslovakia and Poland*, the administration of the CVD law relies on prices to identify and quantify the amount of subsidy.

Congress has recognized the inadequacy of the antidumping and countervailing duty law for dealing with imports from NMEs. Indeed, both earlier drafts of H.R. 4784 and S. 1351, which was proposed last year, have as their central feature the artificial pricing remedy favored by the Administration.

The major feature of this Administration proposal is the substitution of artificial pricing investigations for antidumping and countervailing duty investigations when the economy of the exporting country is controlled to the extent that prices have no meaning. The Administration looks forward to working with the Committee and its staff to reach an agreeable consensus.

Certain safeguards need to be added, however, to prevent unfair or distorted results. It is entirely possible that the lowest average price at any moment would be itself an artificially low price, perhaps depressed below cost of production by competition from NME imports. Basing fair value on such a price would deny to U.S. industries the relief to which they should be entitled. It is also possible that this price would be reflective of monopolistic or oligopolistic pricing practices in the U.S. and contain extremely high and unjustifiable profits. Basing fair value on such a price would require the imposition of additional duties where none logically were warranted, and to deny to U.S. buyers the benefits of fair competition that our unfair trade practice laws are designed to preserve. For these reasons, the law should permit foreign market value to be based on the U.S. cost of producing like merchandise in situations where the lowest average price was not a valid benchmark.

We also believe that the artificial pricing remedy must contain an injury test wherever required by our international obligations. The Administration cannot support legislation that does not contain such a provision.

PROPOSED TECHNICAL AMENDMENTS TO THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

Attached are 44 technical changes that would clarify ambiguities, correct mistakes, and improve administrability in the antidumping (AD) and countervailing duty (CVD) laws. They were drafted by the Department of Commerce and have been approved by the Cabinet Council on Commerce and Trade.

1. Permit Waiver of Verification in CVD Investigations: Amend section 703 to permit waiver of verification in CVD investigations. (Currently waiver is possible only in AD investigations). Often in countervailing duty cases, the same information occasionally applies to two or more different investigations. Petitioner and other interested parties, if allowed, might waive verification of material verified in previous investigations, or material submitted by a government which is publicly available, thus saving the Department time and money. Domestic manufacturers would not be adversely affected by this provision, because it could only be instituted at their request.

2. Critical Circumstances in CVD Only Where Export Subsidies Are More Than De Minimis: Amend section 703(e) to make clear that an affirmative determination of critical circumstances is warranted only where the *export* subsidies are more than *de minimis*. Under the GATT Code critical circumstances can be based *only on export* subsidies. As now drafted, a court could hold that Commerce had to make an affirmative determination whenever the overall subsidy level (i.e., including domestic subsidies) was more than *de minimis*.

3. Clarify Period of Retroactivity in Critical Circumstances: Amend sections 703(e) and 733(e) to clarify that where a critical circumstances determination is affirmative, the retroactive suspension of liquidation applies to entries made on or after the date which is 90 days before the date on which that determination is published in the *Federal Register*. As presently drafted, the law could be interpreted to refer to the date the Deputy Assistant Secretary makes the decision. Publication date is more appropriate than signature date because that is when the public has knowledge of the action.

4. Authorize Termination of Self-Initiated Investigations: Amend sections 704(a) and 734(a) to make explicit Commerce's right to terminate self-initiated investigations. This would end the need to resort to the fiction, as was done in the termination of investigations on certain steel products from Belgium, Brazil, France, Romania, South Africa and Spain (*see* 47 F.R. 5754), that in self-initiated investigations the administering authority is the petitioner for purposes of section 704(a) and 734(a) and may therefore withdraw its petitions and terminate the investigations.

5. Establish Deadline for Submitting Proposed Suspension Agreements: Amend sections 704(d) and 734(d) to provide that foreign governments or exporters desiring a suspension of investigation must submit a draft suspension agreement to the Department no later than 45 days prior to the statutory due date for the final determination. The statute already provides for a 30-day comment period. This change would ensure that the Department had adequate time to analyze proposals. This would prevent the all-too-frequent occurrence of drafts not being submitted until one or two days before the start of the 30-day comment period.

6. Formalize Suspension Agreement Procedures: Amend sections 704(e) and 734(e) to provide more formal rights for domestic interested parties to comment on proposed suspension agreements.

7. Clarify Rights of Interested Parties as to Suspension Agreements in Self-Initiated Cases: Amend sections 704(e) and 734(e) to clarify that domestic interested parties have comment rights on proposed suspension agreements in cases self-initiated by the Department.

8. Permit Renegotiation of Suspension Agreements Where the Breach of Its Terms Is Technical or Is Minor and Unintentional: Amend sections 704(i) and 734(i) to specifically authorize renegotiation of suspension agreements where the breach is technical (e.g., a new exporter must be added to restore coverage of at least 85% of exports) or is minor and unintentional. It is difficult to foresee and memorialize in agreements all of the provisions necessary to cover every eventuality and to assume that the terms are stated clearly enough to avoid every future misunderstanding between or among the parties. In the course of an administrative review, Import Administration may learn that the foreign government or company is in some way acting (or failing to act) contrary to our interpretation of the agreement. The foreign party or government may disagree with our interpretation of the agreement or our characterization of the conduct in question. Such omissions or lack of clarity in the agreement warrant revision or amendment of the written agreement in order to clarify or expand it, rather than termination of it as having been violated.

9. Clarify that When a Suspension is Violated and an Investigation Resumed, Data from Current Period Should Be Used: Amend sections 704(i)(1)(B) and 734(i)(1)(B) to clarify that when a suspension agreement is violated and an investigation resumed, the investigation will be based on current data. The provision as now drafted could be interpretted to require use of the original data base. Since violation and resumed investigation can occur many years after the suspension, this makes no sense.

10. Clarify that Customs Conducts Fraud Investigations: Amend sections 704(i)(2) and 734(i)(2) to clarify that when Commerce determines that a suspension agreement has been intentionally violated, it will refer the matter to the U.S. Customs Service, which will conduct a section 592 fraud investigation.

11. Clarify that an Affirmative Final Determination of Critical Circumstances is Possible Even Where the Preliminary Determination Was Negative: Amend sections 705(a)(2) and 735(a)(2) to eliminate current confusion and to make explicit that even where the preliminary determination of critical circumstances was negative, the final critical circumstance determination can be affirmative. Where it is, suspension is retroactive to the date 90 days before the date on which the notice containing the affirmative critical circumstance determination is published in the Federal Register.

12. Conform Time Periods for Completion of Administrative Reviews: Amend sections 706, 736, and 751 to correlate the time periods in sections 706 and 736 to the time period in 751 and change the latter to make the first annual review due on the first anniversary of the AD/CVD order. That is the first review would be completed one year following the finalization of accounting records in the case, and all subsequent reviews would be due on the anniversary date of the order. As presently drafted, the time periods are inconsistent.

13. Permit Liquidation of Small-Value Entries Without Assessment of AD or CVD Duties: Amend sections 706 and 736 to include a statement such as: "Entries containing merchandise subject to potential countervailing/antidumping duties (whether or not the entry also contains merchandise not subject to potential countervailing/antidumping duties) where the total value of the merchandise subject to such duties is $250 or less shall be liquidated without regard to such duties." Customs allows liquidation of small-value entries as informal entries without extensive paperwork. (The Import Specialist who knows about AD and CVD rates never sees informal entries). This is a cost-effective approach to duty collection. It would be very burdensome for Customs not to allow such informal entries for merchandise subject to AD/CVD. This proposal change also prevents the withholding of appraisement on million dollar shipments because $250 or less of the total value of the merchandise in the shipment is subject to AD/CVD duties. (There are not many commercial small-value entries so there is unlikely to be a significant loss of revenue).

14. Clarify Coverage of AD Law as to Sales for Future Delivery: Amend the causation requirement of section 731 ("by reason of imports") to clarify that action under the AD law is permissible once there is a sale for future delivery to the U.S. This will eliminate current confusion as to whether action can commence before actual importation. (In sales for future delivery, such an interpretation makes the law totally ineffective).

15. Clarify That in AD Suspensions Exporters Must Revise Prices in Accordance with Fair Value: Amend section 734(b)(2) to change the term "price" to "fair value price," so that exporters will have to revise prices in accordance with fair value and not just with the terms of the agreement. By setting prices at "fair value," we would eliminate the danger of there being margins even though price revisions were made in compliance with the agreement.

16. Change Scope of Early Determinations to Cover Merchandise Entered and Resold During Period: Amend section 736(c)(1) to cover only entries which were entered and resold to unrelated purchasers during the period between an affirmative preliminary determination by Commerce and an affirmative injury determination by the ITC. Exporters Sales Price cannot be calculated unless there is a resale to an unrelated purchaser. There can be situations where merchandise is entered during this period but is not resold until long thereafter. Without this proposed change, section 736(c) cannot cover such situations.

17. Expand Scope of Sections 738 and 740 to Include CVD as well as AD: Amend sections 738 ("Conditional Payment of Antidumping Duty") and 740 ("Antidumping Duty Treated as Regular Duty for Drawback Purposes") to cover CVD proceedings as well as AD proceedings. Coverage is limited to AD only because of historical accident.

18. Delete Section 739: Section 739 ("Duties of Customs Officers") is an anachronism. Since Customs now acts solely in response to Commerce instructions in assessing AD and CVD duties, the provision is unnecessary.

19. Clarify that Review in CVD Proceedings Is of the Level of Actual Subsidization: Amend sections 751(a)(1)(A), and (C) to clarify that in administrative reviews of CVD orders the review concerns the level of subsidization from subsidies determined to exist by Commerce. As drafted, the law can be interpreted to refer to the level of all potential subsidies. The change can be accomplished by changing "any net subsidy" to "the net subsidy" in both subsections.

20. Clarify that Wholesalers of Imported Merchandise Do Not Have Standing as Petitioners: Amend sections 771(9)(C)-(E) to make it clear that only parties involved in producing like merchandise in the U.S. have standing as petitioners. This could be done by adding "manufactured in the United States" in each of these subparagraphs, or by inserting "manufactured in the United States" after the words "a product" in section 771(10), which defines the term "like product" as used in section 771(9)(C), (D) and (E). Wholesalers of imported merchandise have sought standing, claiming the current provision is ambiguous.

21. Conform Definitions of Related Parties: Amend sections 771(13)(B),(C),(D) and 773(e)(3) to conform currently disparate definitions for related parties. Import Administration staff suggests that in all cases the level be set at 20%. Currently the range is from "any interest" to 20%. There is no logical reason for the differing levels.

22. Clarify that "Ordinary Course of Trade" Refers to Specific Companies: Amend sections 771(14)(B) and 771(15) to clarify that "ordinary course of trade" refers to the practice of individual companies and is not to be interpretted as referring to practices of the entire industry.

23. Change References to "Wholesale Quantities" to Be "Commercial Quantities": Amend sections 771(14)(B), 771(17), 773(a)(1)(A), and 773(a)(4)(A) to replace references to "usual wholesale quantities" with "usual commercial quantities." The reference to wholesale can be erroneously interpretted to refer to a level or class of sale rather than to the size.

24. Permit Examination of Resellers' Pricing Structure in Purchase Price Transactions: Amend section 772(b) to replace "...purchased...from the manufacturer or producer..." to "...purchased...from the manufacturer, producer, or reseller...." This change codifies Commerce practice in AD proceedings, under which the prices of resellers or trading companies to unrelated U.S. importers are used as the basis of purchase price in certain instances. One example is where the reseller or trading company buys a fungible product from a manufacturer who is unaware of ultimate destination. The reseller then charges different prices to importers in different markets. Another example is evidence suggesting the reseller and manufacturer collusively set a false price in the transaction between them.

25. Conform Sections 772(d)(1)(B) and (C): These provisions concern upward adjustments to purchase price in AD proceedings (i.e., additions to restore comparability to the home market price against which it is being compared). Subsection (B) concerns import duties imposed on inputs by that country which were rebated on items subsequently exported (but are included in the price of goods sold in that country's home market). Subsection (C) deals with taxes imposed by that country which are rebated upon exports. Subsection (C) contains the explicit qualification that this addition is to be made "only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation...." There is no such explicit qualification in (B). There should be. Since the adjustment is meant to restore comparability, it should apply only when the import duties are added to or included in the price of goods when sold in the foreign home market.

26. Where United States Price Is Based on Exporters Sales Price (ESP), Changes Date of Home Market (HM) Comparison to Date of Resale: Amend section 773(a)(1) to change the date of HM comparison in ESP cases from "at the time of exportation" to "at the time of resale to the first unrelated party." During the course of an investigation, the case analyst must decide for which period to request HM information. This often comes down to a guessing game as to how far back to go to obtain HM information to cover comparisons based on the earliest date of exportation for any sales transactions made during the period under investigation. Also, a manufacturer may have had some merchandise in stock for many years requiring Commerce to obtain HM information that is many years old and that has no bearing on the current marketing situation. By basing comparisons on date of resale, the case analyst can limit his/her request for information to the period under investigation. The only problem with this change is that since the product which had been warehoused in the U.S. may have evolved before its resale, there may be no readily comparable model being sold contemporaneously in the foreign market. In these cases, comparisons would have to be based on the most similar models then being sold (properly adjusted for differences in physical characteristics). Adoption of this change also will require amendment of Commerce's regulation on currency conversion.

27. Clarify Provisions on Third Country Resellers: Amend section 773(a) to codify current Commerce practice that where (1) a reseller purchases from a manufacturer who is unaware of where the reseller intends to export the merchandise, (2) the merchandise enters the commerce of a third country (i.e., is not merely transshipped) but is not substantially transformed (e.g., is warehoused), and (3) is subsequently exported to the U.S. -- HM price can be based on price in the third country rather than in the country of origin. This change is based on article 2.3 of the GATT AD Code. It is meant to reflect the realities of which market really is the "home market" under these circumstances.

28. Clarify Criteria for Determining Viability of Home Market: Amend section 773(a)(1)(B) to replace "...so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison..." with "...so small in relation to the quantity sold for exportation to the United States as to form an inadequate basis for comparison...." Without relationship to U.S. sales, Commerce can be faced with (and has been) instances where both home market and non-U.S. export markets are tiny, yet the viability test on its face is satisfied. This makes no sense.

29. Clarify that the Viability Test Applies to Comparisons Based on Sales for Export to Third Countries: Amend section 773(a)(1)(B) to explicitly extend the viability test (discussed in the previous paragraph) to situations where a third country market is not sufficiently large to serve as an adequate basis for comparison. The same reasons for disregarding a home market with an insufficient number of sales apply with equal force to non-U.S. export markets.

30. Change the Viability Test from Quantity and Sales: Amend section 773(a)(1)(B) (the portion quoted in paragraph 28 above) to replace "quantity sold" by "sales." There are situations where viability is better determined by comparison of the value of sales in the two referrent markets, rather than by quantity. This change would enable use of a value basis.

31. Alter Method of Adjusting for Circumstances of Sale: Amend section 773(a)(4)(B) to allow appropriate selling expenses to be deducted from both United States Price and Foreign Market Value, rather than deducting the difference from (or adding it to) Foreign Market Value, as the statute now requires. This change would simplify calculations, particularly those in computerized cases. (This change is unrelated to possible substantive changes in the nature of allowable circumstance of sale adjustments. Such changes will be the subject of a Commerce study).

32. Clarify Use of Weighted Average Cost of All of a Producer's Facilities Capable of Producing the Product Under Investigation Where Constructed Value Is Used as the Basis of Fair Value: Amend section 773(e)(1)(A) to codify current Commerce practice of using the weighted average cost of all of a producers facilities capable of producing the product under investigation for purposes of calculating the constructed value in AD proceedings. In several major dumping cases, most notably carbon steel from Europe in 1980, several producers claimed that certain of their plants were used to produce steel for the U.S. market and others were used exclusively to produce steel for the home market. The plants were of substantially different ages and utilized different production methods, although the end products were identical. This led to substantially different production costs for the various plants and resulted in production cost manipulations and requests for substantial adjustments by the respondents. It was therefore determined that the costs of all plants producing the item would be averaged and those costs would be used. This concept could be implemented by adding the words "...except where more than one facility is utilized in the country of exportation to produce the merchandise, the weighted average cost shall be used" at the end of section 773(e)(1)(A).

33. Amend Constructed Value Provision to Replace "Imported" with "Subject to the Investigation": Amend section 773(e)(1) to replace the word "imported" in line 2 with the words "subject to the investigation." This change would complement using the concept of weighted average cost of all facilities in an antidumping case. It would preclude arguments that we could only consider the costs of plants producing merchandise destined for the U.S.

34. Modify Constructed Value Provision to Refer to General, Selling and Administrative Expenses: Amend section 773(e)(1)(B) to refer to "general, selling and aministrative expenses" (GS&A) rather than "general expenses." This modification would reflect the current practice and would be more specific as to the types of costs to be included in the classification of general expenses.

35. Modify Constructed Value Provision to Refer to GS&A and Profit of a Specific Producer: Amend section 773(e)(1)(B) so as to provide that GS&A and profit shall be based on the actual experience of the producer for whom a constructed value is being calculated. Section 773(e)(1)(B) currently provides that general expenses and profit shall be based upon sales "made by producers in the country of exportation." Interpreted literally, this language requires that Commerce calculate general expenses and profit upon the basis of a national average. In practice, neither Commerce nor Treasury has used a national average. In the Trade Act of 1974, Congress amended the definition of "such or similar" so that Treasury could no longer calculate dumping margins for Company X upon the basis of sales by Company Y. The purpose of this change was to allow the practices of each producer to stand on their own. Since constructed value is a surrogate for actual sales, the decisionmakers thought this this rationale also should apply to constructed value and the calculation of general expenses and profit. This amendment would conform the statute to current practice.

36. Clarify That New Issues Can Be Raised in an Administrative Review Proceeding of a CVD Order: Amend section 775 to replace "investigation" with "proceeding." This would give explicit authority to consider new subsidy allegations in administrative reviews of CVD Orders.

37. Use Term "Best Information Available" Consistently: Amend text of section 776(b) to replace "best information otherwise available" with "best information available," the term consistently used elsewhere in the statute.

38. Clarify That Ex Parte Memos Apply to Administrative Reviews: Amend section 777(a)(3), replacing "investigation" with "proceeding" to clarify that the ex parte memo requirement applies to administrative reviews of orders as well as to investigations.

39. Clarify That Ex Parte Memos Are Required Only Where Interested Parties Provide Substantive Information Relating to a Proceeding: Amend section 777(a)(3) to clarify that a decisionmaker is not required to write an ex parte memo any time he happens to meet an interested party or his attorney (e.g., at an evening reception), but rather only when information relating to proceeding was presented or discussed.

40. Change "Confidential" to "Proprietary Business Information": Amend section 777 to replace "confidential," wherever it appears, with "proprietary business information." This will clarify that the reference always is to sensitive company commercial and financial data rather than national security information at the "confidential" level.

41. Permit Release of Proprietary Business Information to Customs: Amend section 777(b)(1) to enable Commerce to release proprietary business information to Customs when it is conducting Customs fraud investigations. The law now permits access only by Commerce or ITC staff involved in the proceeding. This change is needed so that Commerce can enforce compliance with its requests for accurate information through the threat of civil or criminal fraud actions.

42. Apply Interest Provisions to All AD and CVD Orders: Amend section 778(a) to codify Commerce practice and make the interest provisions of the statute applicable to all orders and findings. Section 778(a) presently provides for interest on overpayments or underpayments of estimated duties deposited on merchandise entered or withdrawn for consumption on or after an ITC final affirmative determination under sections 705(b) (for CVD) or 735(b) (for AD). As a result, ITA has no explicit authority to pay or charge interest for surpluses or shortages in deposits collected on entries under "old law" CVD orders, old law AD findings, or no injury CVD orders under new section 303 because none of those actions involved ITC decisions under sections 705 or 735.

43. Conform Interest Provisions to IRS Practice: Amend section 778(b) to provide that when interest is assessable or refundable, it will be calculated on the basis of the IRS rates in effect during the period covered. If the rate changes during the period, the variation will be taken into account in the calculation. This conforms to IRS practice. As currently drafted, the rate of interest in effect when the amount of AD or CVD is finally determined controls all covered entries (some of which entered up to two years prior to that determination.

44. Clarify Use of "Investigation" and "Proceeding": The terms "investigation" and "proceeding" have distinct technical meanings in AD and CVD cases. The former refers to the time from the filing of a petition until the issuance of an order or a negative determination ending the case. The latter applies to a longer period; where an order is issued, it covers the entirety of the case from petition filing to ultimate revocation of the order. Given the duplication of part of its scope by "investigation," "proceeding" usually is cited to refer to the post-order phase of a case. Despite these distinct meanings, the terms are used loosely in the statute. All references to either term should be checked and, where appropriate, changed.

GEORGE M. O'BRIEN
17TH DISTRICT, ILLINOIS

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June 30, 1983

Mr. James A. Baker, III
Chief of Staff and Assistant to the President
The White House
Washington, D.C. 20515

Dear Jim:

On the eve of the President's decision with respect to the Specialty Steel Section 201 trade case, it might be of benefit to you as an integral part of the decision making process to read an excerpt from the testimony of Gerald J. Stein representing Allied Tube and Conduit Corporation in Harvey, Illinois. Mr. Stein asks for a return to the use of the Trigger Price Mechanism and the shifting of the burden of proving unfair trade practices to the Commerce Department.

The following language is very graphic in pointing out how hard it is to make it through to a favorable decision on the part of the Administration:

insert

> "I can tell you from bitter experience that it is a difficult job to convince a hard-hit United States manufacturer that, despite his severe losses and the need to close facilities and lay off loyal employees, he should invest thousands of dollars in a long proceeding before two different government agencies, which will require him first to investigate and assemble detailed data from foreign countries and from his long-time fierce domestic competitors, will subject him to detailed questionnaires calling for information in a form he doesn't keep, will require him to testify from two to four times in Washington, D.C., can be settled without his participation, won't be resolved for a year, can lead to prolonged judicial review, and if he hangs in through it all the government collects and keeps the duties. What's worse, his competitor who said no thanks to the civic opportunity to share in the cost gets the same exact benefit!"

Sincerely,

George M. O'Brien
Member of Congress

GMO: mj